UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CARLA MARIE BARTLETT and JON WILLIAM BARTLETT,	)	
PLAINTIFFS,	)	CASE NO. 2:13-cv-170
vs.	)	OCTOBER 6, 2015
E. I. du PONT de NEMOURS AND COMPANY,	)	8:35 A.M.
DEFENDANT.	)	

VOLUME NO. 16
TRANSCRIPT OF THE PROCEEDINGS OF THE JURY TRIAL
BEFORE THE HONORABLE EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT CHIEF JUDGE
COLUMBUS, OHIO

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TUESDAY MORNING SESSION

OCTOBER 6, 2015

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Thereupon, the following proceeding was held in chambers:

THE COURT: A couple little things. Ms. Niehaus pointed out some discrepancies on the jury instructions that were corrected. We fixed those. You've seen that?

MR. DENTON: Yes.

THE COURT: It's consistent with what I said on the bench, so we fixed that.

And then I've gotten another briefing regarding a guy who could have been an expert but wasn't. I'm still of the same view that as far as Dr. Dourson's CV, that won't be going in.

Have you worked out all the issues with the other CVs? The ones are coming in but the plaintiff was able to do whatever redactions or summaries you thought were appropriate?

MR. BILOTT: I believe so, Your Honor.

THE COURT: That's all I have. Any other issues?

MR. DENTON: Judge, we have made a decision to withdraw the battery claim.

THE COURT: All right. So what we'll do quickly is change the instructions. It will change a number. It will take out all the battery instructions, of course. Several places where it referred to three claims, that will be two

claims. The verdict forms will change. And I think that that's about it. So nothing about substance other than just the removal of the claim.

MR. DENTON: Yes, Your Honor.

And if it's helpful for the Court, I had someone, early this morning, make those edits. Not that we would do the Court's work but we thought we would --

THE COURT: We don't mind.

MR. DENTON: We thought it would be easy on the Court. And the other point there, Your Honor, we had asked in limine that no mention be made in closing of the removal of that claim.

MR. MACE: We have no objection to that.

THE COURT: So what I'm going to do is, even though I told them there were three claims, I'll just be silent on that. It will be a two-claim submission.

MR. DENTON: Very well.

MR. MACE: And I would mention, Your Honor, we were going to display, in accordance with Your Honor's guidance, just a couple of the instructions. But some of them may be impacted by this now. So we'll need to get an electronic copy.

THE COURT: We'll have it fixed this morning.

MR. MACE: We'll get a final?

THE COURT: We'll do that, I'm sure.

MS. NIEHAUS: We have some residual issues not related

to the CVs but some other documents.

Are we resolved on the other two --

MR. BROGDON: 1847 and 1943.

MR. BILOTT: Yes.

MS. NIEHAUS: So 1847 will go in as it was.

MR. BROGDON: The one you listed.

MS. NIEHAUS: And we'll relabel that 1937A?

MR. BILOTT: That's fine.

MS. NIEHAUS: I think the only other one, Your Honor, was 612, it was the Little Hocking website.

THE COURT: Where's Chris on the --

MR. BILOTT: He gave her the instructions.

MS. NIEHAUS: This was the website that was not admitted but you asked for some redactions to be proposed. Mr. Paulos sent over a version last night with some redactions. I believe his are in blue.

MR. BILOTT: Yes.

MS. NIEHAUS: We're fine with those redactions but we wanted some additional redactions. Ours he has marked in red. So that's on this version.

THE COURT: So the red part is proposed to be redacted by the defendant but not agreed to at this point?

MR. DENTON: Correct.

MS. NIEHAUS: Your Honor, I went back through the transcript last night and identified the portions of the

document that had been read to the jury. We believe everything other than what was read to the jury should come out. It's all third party statements. It's speculation. It's innuendo, unsupported allegations by the Little Hocking Water District. And there was one portion at the end that was displayed to the jury about Gerry Kennedy destroying documents but then on side-bar you said should not have been disclosed.

MR. BILOTT: Your Honor, that's -- obviously Plaintiffs disagree. The sections that have been -- pretty much entire rest of the letter that DuPont proposes to take out were referenced in summary form by the witnesses. They didn't maybe quote the exact language but those sections were discussed by the witnesses, Your Honor.

MS. NIEHAUS: Your Honor, you'll remember that the way this came up was that we had put a document up that referenced just the link to the website. Before that, the document was out entirely. And the link -- what Your Honor had said was, well, you can show the jury what would have been seen if someone had followed that link. But then there were portions that were displayed. But this document is full of references to newspaper articles --

THE COURT: We only have a couple minutes to do this. I want to cut this short. This is 15 pages of material. I could spend a couple hours on this if I had the opportunity to, but I don't.

Let's go to the first issue. There's some reference in here to the CATT team and whether or not, with regard to the CATT team, DuPont could rule out the development from humans. Anybody testify to that from this document?

MS. NIEHAUS: Where are you, on page --

THE COURT: Page 39. Page four at the bottom.

MS. NIEHAUS: We've agreed that whatever is --

THE COURT: The red part I thought is what's at issue.

MS. NIEHAUS: What's in red is at issue. I've got a different version actually. Because that was -- let's work off my version.

THE COURT: I thought we had this all resolved yesterday.

MS. NIEHAUS: So what I've boxed in red is the additional things that we think should come out. So starting on page two there's a hearsay statement, I'm sorry, Your Honor, the prior page. There's a hearsay statement there about what was told to Little Hocking by a third party water testing company.

MR. PAPANTONIO: Judge, this is what they would have seen if they come to this website. This was not going to come in until they opened the door and they talked about the Little Hocking website and how you can get all your information there.

MR. BILOTT: Exactly. This entire letter was posted. There was nothing redacted for any of the -- this is what the

testimony was. This thing was linked in full.

THE COURT: But here's what I don't want to have is the jurors picking up a document for which there hasn't been any extensive testimony and reading comments. That could hurt either side. I'm open for suggestion, but if there was a witness who went through this --

MR. PAPANTONIO: There wasn't. There wasn't a witness that went through it.

MS. NIEHAUS: No, there wasn't. Your Honor, what you said is this document is not admitted yet. You can use parts of it. Stay away from the things that -- you said, in other words, things that would have gone right to DuPont are in here. And that's what you said, stay with that for now. So anything else, the statements from third parties, statements from newspapers, summaries of statements from newspapers, that all should come out.

MR. PAPANTONIO: The only troublesome thing is they made this an issue by saying, the issue was we opened all of this up to -- they put it up there as a website, go see this website. You're going to learn the story about DuPont. Now what we're hearing is, we don't want that story heard. That is part of the problem.

THE COURT: Any particular problem with the proposed redactions? There would still be a lot of this in.

MR. BILOTT: I think, if anything, one section we

definitely disagree with is on the last page. The last page of redactions where it's Little Hocking stating their position.

THE COURT: That's at the bottom --

MR. BILOTT: That's P1612.7.

THE COURT: And you could live with the other redactions?

MR. BILOTT: I think so, Your Honor.

THE COURT: That's what we'll do. We'll leave that in and everything else will come out that's proposed to be redacted. Everything that's in now stays in except for the parts that are in disagreement. Everything that's disagreed will come out except the last page.

MR. BILOTT: Thank you.

MS. NIEHAUS: All right. I'll take care of those redactions.

MR. MACE: One issue I wanted to raise briefly, Your Honor. I've got several other hearings and oral arguments to schedule. There was a rumor around the back of the courtroom that the Wolf trial may --

THE COURT: No. I want to talk to you about that. What I'd like to find out is what you think the next trial will take time-wise. We'll have time for that. I was thinking, in fact I'm getting pressure from our jury commissioner that we're going to move that by one day I think I told you. I can't start it that Monday but the Tuesday would be the date that I'm

looking at this, December 1st. It's going to be a four-week --

By the way, I don't want to talk about this unless we have any other issues for today. Do we?

MR. PAPANTONIO: We have one issue.

THE COURT: We'll come back if we have time.

MR. PAPANTONIO: Judge, I worked for MSNBC for quite some time and Ed Schultz is here today. He has high recognition. There may be some other people there from MSNBC, too. Ed's doing a story on this. He understands not to make a big sign the autographs and that.

THE COURT: Any problem if he's not in the first row might make him less visible?

MR. PAPANTONIO: I don't think so. I think they're going to recognize him anyway. He's six foot four, six foot three.

THE COURT: He's free to be there. I have no problem with that.

MR. PAPANTONIO: I just want to make the Court aware of that.

THE COURT: Okay. Anybody else?

MR. PAPANTONIO: I don't know right now. I don't know.

THE COURT: I don't think that's going to happen. You see any issue?

MR. MACE: I don't see any issue as long as no

autographs and making a big deal of it.

THE COURT: Let's go back to this. It's my thought if we have another four-week trial we're going to be missing a lot of days and you'll have a hard time getting jurors who will go through the entire month of December. If it's shorter, and I never impose time limits on a case ever, but if you've been through one of these now you probably have a better idea of what the next case is going to look like. Any thoughts on how long the trial would go?

MR. MACE: It may go just a little bit longer for the second one, Your Honor. Longer than this one in that I think both sides had some issues come up that they weren't as prepared to deal with as they wanted to be. So I think we have to be prepared to deal with some additional issues.

THE COURT: I don't want to throw the schedule off. Even if we start on a Thursday, that one day wouldn't make any difference. Four weeks will put you to the end of December, right up to New Year's Eve. I've had a case where one of the issues was they were deliberating Christmas Eve and that was an assignment of error and the assignment lost. I'm going to make you stipulate you won't appeal on that issue if we try this.

So I am concerned with that part. Think about it. If there's another way we could do it, I don't think we can start it earlier. That wouldn't make sense. We can move it back a week, it's right after Thanksgiving. That's generally a tough

time of year to get a jury to sit for four weeks.

MR. MACE: One thing I'd point out, Your Honor, is that we started out with the six bellwethers and then Mr. Pugh dropped out. We only have five now. So we have a slot.

THE COURT: Move it forward?

MR. MACE: Move it forward.

THE COURT: I don't have a strong preference except for the preference that I can imagine what the pool would look like when we ask them, how many of you can serve all the way to January 1st? You're going to have a lot of people saying, what? It's going to be a tough month.

MR. PAPANTONIO: Judge, as far as how they move, if the Court decides that's what has to happen, we've already kind of invested the effort for March for the case we have for March. And we wouldn't want to bump that to put this one into there.

THE COURT: We can look like the first of the year, too. Just move it a month.

MR. MACE: Yeah. And then you're going to run into the issue with I think the Little Hocking case got rescheduled for January 15th. So we were avoiding --

THE COURT: You're in that case?

MR. MACE: Mr. Woods.

MR. WOODS: Yes.

THE COURT: You're in that case again.

MR. MACE: And then we like the alternate courtroom just because of the number of lawyers involved.

THE COURT: We're going to be bumping. Judge Marbley is very generous and gracious with that but he has a couple of murder cases coming up that are going to fill the courtroom, too. So we may have some issues there. There is a screen already in place in mine similar to the one you're using so the technology is there. Let's think about this. When the jury is out tomorrow we'd have plenty of time to discuss this.

Anything else before we begin?

MR. PAPANTONIO: No, sir.

MR. MACE: You know what, Your Honor, I will mention I did review my argument last night and I think there is a very logical break time after about an hour. So I would ask for just -- it doesn't have to be just a five-minute break even.

THE COURT: All I want to be able to do is get the charge to them before 4:30, something like that. It sounds like we're on schedule. So you'll pretty much kill the morning. We'll probably take a little bit earlier lunch break when you're done and then you'll have a break.

You'll still be within the two hours?

MR. MACE: Yes, sir. Well within.

THE COURT: And then you'll have your -- I'm assuming you want 15 minutes for rebuttal. That's what you asked for. And then we'll do the charge right after that. Let's just get

it all done today.

Very good. Thank you.

(End of chambers discussion.)

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Thereupon, the following proceedings were held in open court with jurors present at 9:04 a.m.

THE COURT: Good morning, ladies and gentlemen. And welcome back. We are about to begin the final portion of this trial.

You have now heard all of the witnesses and testimony. And when you begin your deliberations you'll also have with you all of the exhibits that have been admitted as evidence in this case. I mention that because that is the basis for your decision that will follow. What you'll next hear will be closing argument from the attorneys for each side.

This is a very important part of the case but I caution you that it will be the opportunity for the attorneys to point you to the different parts of the testimony and record that you've heard. As I've cautioned you, what the attorneys say or do, of course, is not the evidence upon which you'll decide the case.

The plaintiff has the burden of proof so Mrs. Bartlett will have her attorneys go both first and then last with rebuttal. Each side has asked for approximately two hours for closing argument. And then after that, later today I will give

you the final legal instructions that will apply in this case.

With that, I will call upon Mrs. Bartlett's counsel to begin with closing argument.

MR. PAPANTONIO: May it please the Court.

Ladies and gentlemen, thank you to your time these last few weeks. It's been a lot of information been thrown at you and we realize that.

As I speak to you this morning I want you to rely on the evidence. I want you to rely on the documents that we've introduced because, as the Judge says, that's what you'll have back in the jury room. So what I've done is I've prepared that information the same way that I prepared the opening statement.

I started this case by telling you there's nothing I will tell you that we will not have a document to substantiate. And we have watched this entire trial as you have taken incredible notes. Please don't stop taking notes right now because I'm going to try to give you the ideas of what we think the evidence shows and I'll go right to the document we think shows it and then I'll ask you to consider that back in the jury room.

After working in courtrooms for 30 years I've occasionally run into the cynic, very rare, but the cynic who believes that the court system, the justice system doesn't work; believes that the only place that you really see justice being the only time you see things work out like they're

supposed to is in great theater, maybe in a movie or maybe in a great novel.

Time and time across this court, across this country I've tried cases from California to Connecticut. That's been proven wrong. So I don't believe in the cynic. I believe all a jury wants to know is what are the facts, let me know the truth and let the jury decide. And I believe in the jury system and I've seen the cynic day after day say it doesn't work. It does work. It changes -- it changes the way we interact as people. It holds a democracy together.

One element is the constitutional notion of justice for all, ladies and gentlemen, is not -- hasn't morphed into the idea. It's an old concept. It is basic constitutional concept. It has not morphed into the idea that it's only justice for the powerful. A courtroom like this, Ms. Bartlett is able to come to the courtroom with the biggest corporation in the world and have a jury hear her facts. And she's able to tell her story. And there is no place for justice only for the people who have the most power. And this concept of too big to be held accountable was never something that the constitution anticipated.

It doesn't fit with our constitutional values in this country. It doesn't fit into the plan of democracy that we've made so important. And for four weeks, my staff and I have tried to remind DuPont of that. And there's been times I know

with cross-examination you thought I was a little hard or you might have thought my partner was a little hard on the witness. But this is the only time Ms. Bartlett has to tell her story. And the only way this system works is if I do my job.

So this morning, in this Ohio courtroom, I'm going to try to do my job. And I hope DuPont hears me. I hope they hear that there's no system in this country that says that a corporation is too big to be held accountable. And I want to do it with the documents that you saw in this case.

You heard an awful lot about this concept that we have no information at this point that would lead us to believe that there's a significant human health impact. We are the first person who introduced that. We are the first -- we introduced that in our case. Why? We wanted you to see part of this case is that as late as 2007 you have the biggest organization in this country who was supposed to be understanding what's happening with human health. They don't understand it because DuPont set out to make sure they don't understand it. And in your jury verdict you're going to hear from the Judge, you're going to hear a term called conscious disregard. That's conscious disregard: To intentionally set up a system to where science cannot catch up with the truth, to where science has no idea what's happening in people's lives in the Ohio Valley.

How about this one? EPA is not aware of any studies specifically relating to current levels of C-8 exposure to

human health effects. We wanted you to see that. We want you to see that as late as 2014 they're saying, we don't have all the information. That is not a good thing for DuPont. Any way you dress that up, that is not a good thing for DuPont.

It's not a great idea to hide information from doctors. It's not a good idea to set up on a plan where you hold up the information so doctors like Dr. Bahnson have to take the stand and say, I didn't know about this in 2015 and in 2014. This is part of the case. Every time you see a document that says, we didn't have enough information to conclude, we couldn't tell you whether C-8 causes disease or not. Every time you hear that, ladies and gentlemen, understand that is part of the conscious disregard that this company showed to everybody living in the Ohio Valley.

It's conscious disregard and we asked the question about conscious disregard. You might remember we asked Dr. Michael Siegel. By the way, if you don't think a company that has thousands of scientists could bring in a doctor like Dr. Siegel, a public health specialist who devoted his life to public health, if you don't think they could bring in a doctor to dispute what this man said, really? Here he says, I asked him, do you believe that DuPont displayed a conscious disregard to the rights and the safety of people like Ms. Bartlett, great probability of causing substantial harm? He says, I do. He's not equivocal about it. He says, I do. And he's undisputed in

this case, ladies and gentlemen. Nobody has disputed him. No public health scientist has come to this Court. You heard his qualifications.

This is not one of those cast actors like we saw with Mr. Dourson, who I'm going to talk about in a minute. This is not an actor. This is a guy who's devoted his life to public health. And when I asked him the question, do you believe conscious disregard is here, he said, yes. He says, I think it's important. Actions are important. He says, it doesn't require some sort of malicious intent. It's their actions that are important. Their actions where they failed to monitor the water and they failed to tell the public about what was going on is conscious disregard.

He says something else I'm going to show you in a minute. He says, conscious disregard is when a company like DuPont makes the decision to keep quiet, to keep silent so scientists, as late as 2015, don't even know what's going on. So doctors like Dr. Bahnson who have to treat Mrs. Bartlett for cancer, life and death situations, to where he doesn't know what's going on. That's conscious disregard.

And the man who explained it the best, I really think, was Mr. Petty. I asked him, do you have an opinion to a reasonable degree of certainty whether DuPont existed -- exhibited conscious disregard of the rights and safety of humans in the surrounding community? He says, well, certainly.

First of all, do no harm. Always make mistake on the part of the public health. That's common sense. You don't need an expert to tell you that. But he told you something else. And this may be, this is a critical -- this was a critical document in this case and I saw you all taking notes on it. You understood how critical it was. Watch this.

I asked him -- he was on the stand and my partner, Mr. O'Brien, asked him the question. Would you talk about this document called connecting the dots? Would you talk about this document? And he said, yeah, I'll talk about it. I reviewed it. He said -- the question was, what are the dots? The dots are all the bad things this company has done. You'll have this document in the room with you. You'll be able to see it. It's unequivocal.

When they're talking about dots, they're talking about all the bad things they have done in regard to C-8. You watch. When you have it back there, you'll see it.

Mr. Petty said, dots equal liability. You remember that? He reviewed this. He reviewed it with all the other information. Let me talk to you about this document. This tells a story.

This tells you the story why Dr. Bahnson had to take the stand and didn't know anything about all this. This tells you why the EPA, as late as 2008, is still writing, we don't have enough information. Because this company set out to make sure

that nobody connects the dots, nobody connects all these issues that are so important about what they knew and when they knew it and how bad it was. Under no circumstances can we let the people connect the dots.

First question in this document was, who has an interest in the dots? Well, local environmental, environmental justice activists, plaintiffs' bar, people like Mr. Bilott, who but for his effort this story would never be told. Local environmental organizations, they have an interest in it. Community advocates. The media. How does the media report to let anybody know something if every day they're covering it up? If every day they're trying to make certain that nobody connects the dots? Watch this.

You see this here on the bottom, is there a strategy we could use to minimize the amount of information being disseminated? I didn't write that. They wrote that up in Delaware, up where Dr. Rickard does his business up in Delaware with all this was taking place. How is there a strategy? Yeah, there's a strategy. You know what, it worked really, really well. Is there a strategy we can use to minimize the amount of information being disseminated? That's right on this document.

And then it says, how can information about dots be obtained? Well, discovery proceedings. The same thing that Mr. Bilott's been criticized for in their own documents. He's

treated like some kind of second-class citizen because he's trying to tell the story to people in this courtroom, because he's trying to tell the story to people in the Ohio Valley.

Discovery proceedings. You think we got all these documents just from DuPont? No. That didn't all come from DuPont. It took hard work. And Mr. Bilott is the one who started all that.

Government agencies. They're the ones who we got, how can information about dots be obtained? You can sure find it out from government agencies.

The next document, the next part of this document. Please, ladies and gentlemen, look at this document. It will cut through a lot of what you have to decide in this case, connecting the dots. What can trigger interest in the dots? Public discontent. That was going on in the Ohio Valley. They were worried about it. People were wondering, my neighbor's sick, their neighbor is sick, what is this all about? What is this stuff you're putting in our drinking water? What is it? I hear about C-8. I hear it stays in your blood system for 20 years. Is that good or is it bad?

That's one of the things they did not want connected up in this case. Health issues. What can trigger interest in the dots? Health issues. That can sure do it. The media. Once the media actually has the information, they can report it and people like Ms. Bartlett and her family can talk about it and

they can make a decision. Do I want my family around this? Do I want my baby drinking this water? They can make a decision. It's about choice.

Here was the effort to keep the choice away. As a general -- here's what they say. This is their words. This is not me talking. It says, as a general statement, anything that limits the interest in dots will tend to diminish our exposure. As a general statement, anything that limits the interest in the dots will tend to diminish our exposure.

In other words, people don't find out about bio-persistence. They don't find out that C-8 stays in people's blood for 20 years. They don't find out about latency. They don't find out what we've talked about in this case that they didn't even know. DuPont had no idea what was going to happen 20 years later. They were more concerned about bio-persistence than they were cancer. And I want to show that to you in just a minute.

But here's the point. This is conscious disregard. This isn't just negligence. You're not going to have any trouble deciding negligence. This goes far beyond negligence. Most of what I talked to you about is going to be about conscious disregard because that's the next step after negligence.

It got to the point to where connecting the dots worked so well that one -- in this town, right here in Columbus, you

have a premiere world-class oncologist who's written more, studied more and researched more about cancer than 100 doctors. He's right here in your backyard. He's the one who was asked to put together, help build the James Cancer Center and now, what is the James Cancer Center? It's one of the most effective, most important cancer research centers in the world. Right here in Ohio. Right here in Columbus. And he came to town to tell you. He was asked this question by my partner, Mr. Douglas.

He says, did anybody come tell you about carcinogen in the drinking water? Not with me. They never told me anything about that. Why would you not let doctors know the same thing you told your employees back in 1988? They told their employees in 1988 that this stuff can cause cancer. They were silent with everything else dealing with the community. They didn't say a word. And this is the effect of that. Did anybody say anything to any people around the James center? No. I don't know of anyone that they did.

That is part of the connecting the dots story. Keep it quiet. Don't talk about it. Maybe the media won't pick up on it. Maybe Mr. Bilott will get tired of what he's been doing the last 15 years. Maybe Ms. Bartlett will have no idea what caused her cancer. Maybe the people drinking the water out there in the community will say, well, there's nothing here to worry about. Maybe, maybe, maybe.

You know what, they gambled and they lost. And you are the first people to hear this story and the whole world's watching. You're the first people to hear the story from beginning to end. This is the first time this story has been told in a courtroom.

That's why I say, your burden is huge. Because you have to factor in some things that, in your daily life, you don't run into. You don't run into conduct like this.

I talked about Dr. Siegel. Dr. Siegel talking about conscious disregard. Well, here's what I wanted to ask him. I said, Dr. Siegel, what does it mean when people hide things? What happens when, for example, this company hid information from the EPA which is the clearing house for everything that happens as far as public health on an issue like this? What happens?

He said this. I said, do you have any information on how the process of withholding information, being transparent slows the ultimate decision? He says, it's important to point out that the EPA doesn't go out and investigate all kinds of chemicals. Companies are trying to find out about hazards. They really only respond when evidence is presented.

Evidence in this case was covered up. And that was part of -- that was part of the connecting-the-dots strategy. That's what they were trying to do. To where a person couldn't get on the internet and find out what was really happening.

They had no way of doing it.

He says, had the information been released to them earlier, they could have done something much earlier to protect the public health. They could have protected Mrs. Bartlett. They could have protected the people in the Ohio Valley. They knew about it, ladies and gentlemen, as early as 1981. And I want to tell you why. I'll tell you in just a minute.

It wasn't just Michael Siegel saying that. This consent order that we've talked about here, it says, time and time again, it says, failure to receive TSCA substantial risk information deprives the EPA of being fully apprised of potential risks about chemicals and it impairs the EPA's ability to take actions necessary to address the potential risk to human health or the environment.

How do you make a decision that that's a good thing? You make a decision because you are consciously disregarding decency. You are consciously disregarding fairness. You are consciously making decisions that the profits we're making off of Teflon is far more important than the human life of a woman like Ms. Bartlett.

And then we get to Dr. Rickard. Dr. Rickard's on the stand. When we say to Dr. Rickard, my partner asked Dr. Rickard, he says -- he starts talking about, we finally had to admit -- we admitted in 2012 that C-8 causes cancer. And then he was asked, okay, at least in 2012 when you had to admit

it did you tell the community? Did you send a press release to the people living in the Ohio Valley? Did you tell them, did you hold town meetings, did you have news bulletins and websites, all of which they did when they were telling everybody don't worry about this stuff, it's not a problem? How many of those did you see? How many press releases where they were telling people like Ms. Bartlett, don't worry about it, everything is okay? All this stuff about cancer doesn't amount to anything. Don't worry about it. How many times did you hear that?

And then the next question was, well, I'm talking about -- Mr. O'Brien took it right up until last Thursday in the courtroom. He says, I'm talking about all the way to today, did you send anything to the Ohio Valley residents telling, oh, you know what, all that stuff you've been drinking for 50 years, it can kill you. It can cause cancer. It can have you in an operating room where they cut your body in half to remove a tumor. Did you tell anybody? No. No. We didn't tell anybody.

You know why that's important? Because they've tried to tell you that we didn't know, none of this was foreseeable and had we known something, we would have done something about it. We'd have done something about it.

Ladies and gentlemen, they had this information in 1988 and they didn't do anything about it. In 1988 they told their

employees, you can get cancer from this but they kept it quiet from the people in the Ohio Valley. They kept it quiet from people like Dr. Bahnson. And you know what else about this, think about this. You saw documents -- you saw literature that Mr. Mace put up on the screen and literature was as late as 2013, 2014 maybe where they're still saying, there's not enough information to make a decision. While that's up on the screen and they're saying, we don't have enough information to make a decision, in the file cabinets of Mr. Rickard's Delaware group they're admitting, yeah, yeah, it causes cancer.

So what do you do? What do you do? What you do is you do the same thing that the asbestos industry did, the same thing the DET industry did, the same thing the tobacco industry did. What you do is you string out the American public as long as you can, you create doubt as long as you can, you make every penny, profit you can make off of Teflon as long as you can because you know paying everybody off in the end is not going -- it's not going to touch what you made in profits.

That's what you do. You create this aura of being silent. You don't tell anybody. And because you don't tell anybody, you have to build a defense around we don't tell anybody. You know what the defense is? We didn't know. That's what we heard in this courtroom. We didn't know. We had no way of knowing. Nobody told us. Nobody directed it to us. Nobody told us that C-8 can cause cancer. Even though we

did know. It's the only defense you got.

Mr. Mace is a wonderful attorney and he's a wonderful person. He really is. He's here doing his job. And anything I say here is not directed to Mr. Mace. But you can bet it's directed to Mr. Rickard. It's directed to DuPont. It's directed to those people in Delaware who made these decisions I'm going to talk to you about.

How about this decision? Fayerweather. This guy is a world-class epidemiologist, one of the best in the country. DuPont has the ability to hire the best in the country. And they did. And they hired Mr. Fayerweather to do something. You know what he did? All that stuff that Mr. Rickard said they looked back at, Dr. Rickard said, oh, we looked back at the workers and we looked through their cancer issues and there weren't any and we looked through whether or not it's causing kidney cancer. We did what they call a worker study review. Which is not epidemiology, by the way. It is absolutely not epidemiology.

They did a cancer review. This guy did it. Okay? And after he did it, in 1991, he went to leadership of DuPont and said, you know what, for $45,000 I can do a real epidemiology study and I can have enough information to know whether C-8 has the ability to kill people that are drinking it every day. I can do a study that tells me, do we have enough information to tell those people who are taking showers with it every day what

the effect is. Give me $45,000, I'll go do it. It's what I do for a living. Just give me the money.

They said, no. Their words, wait. Do the study -- do the study after we are sued. Ladies and gentlemen, they've been sued and you're the first people to hear the story. You're the first people to understand the significance of that statement. Wait until we're sued. Don't do an epi study. Don't worry about it. 1991. My partner, Mr. Douglas, is going to talk to you about what they did to avoid epidemiology studies after that, year after year after year.

So what we're talking about now is we're talking about the idea that, do the study after we're sued. We're talking about the idea of this thing called foreseeability. Foreseeability is just common sense, ladies and gentlemen. It's like standing in -- you're standing in the road and you see a big old truck coming your way and you say, well, I wonder when I ought to jump out of the way? That's foreseeability. I see that truck coming. When do I jump out of the way? When do I get out of here? That's foreseeability.

Talk about foreseeability. In 1984 -- they built their entire case around it. You understand that? That's why I keep talking about it. The entire case is, we didn't know, they couldn't know, they didn't know until 2014. We didn't know anything. Foreseeability. How about this for foreseeability?

When the lawyers up there in with DuPont headquarters in

Delaware say this, as we are already liable for the past 32 years. Incremental liability from this point on if we do nothing. Well guess what, they did nothing. They did nothing. And then it goes on to say, as we are already liable for 32 years.

Ladies and gentlemen, I didn't write those words but I felt like I had to put them up in front of you as often as I could to remind you that this whole thing of foreseeability, we didn't know, we didn't see the truck coming, we didn't know to jump out of the way is ridiculous. It's just so far off plan.

How about this one? Right after that. This is 1984. 1992, the legal department in Delaware is saying the same thing. They're saying, golly, you know what, legal -- the legal department thinks toxicity issues with C-8 could turn into the number one DuPont tort issue.

That's document 8276. It's right there. It's in black and white. They know they have looked at the material. They have done their due diligence and in 1992 they're saying, we think it could be a tort issue. Which is an injury issue. That's what tort is. It's an injury. And we think it could be our number one DuPont tort issue. You think that just fell into our lap, that document? No, it didn't.

How about this? How about John Bowman, year 2000. The reason this is so important, you all have seen this so many times but the reason it's important, ladies and gentlemen, is

this document is document 176 and in that document 176, think about what he is saying? Bowman, who is the lead lawyer in all this stuff says, I've looked at everything. He's looked at exactly what you have looked at. He has reviewed what you have looked at. The first time he looked at it he said, we've got a problem here. And his problem was, our story is not a good one. That's what he says. Our story is not a good one.

And you know what, here's what's interesting. He says, we're going to get hit for punitive damages. Additional threat of punitive damage. Not because of cancer. There's not a word in here about cancer. He has evaluated the case. He says, the bigger problem is bio-persistence. The bigger problem is people have this in their blood for 20 years and we don't know what it means. The bigger problem is just like asbestos, 20 years from now, people are going to have illnesses we don't even know what they are.

He's the one that says this. He's talking about punitive damages and he's not talking about cancer, ladies and gentlemen. They thought bio-persistence was a bigger problem than cancer. And that's the truth. And today, as we sit in this courtroom, we don't even know how that ends. We literally do not even know how that ends. He says, our story is not a good one.

The test for foreseeability is not -- it's not whether DuPont should have foreseen exactly how the injury was going to

take place. Back when they were putting this stuff in everybody's drinking water, when they were telling people shower with it and telling them there's no harm here, don't worry about any of this stuff. Back when all that was going on, the truth is, they didn't even have to know how -- what the end injury would be. Could have been liver, could have been cancer, could have been a whole host of things. They don't have no know exactly how that ends. They just have to know that a reasonably prudent corporation could have anticipated that their acts would cause injuries, period.

So what do they do? After they get all this information from people like their lead lawyer who says, I'm worried about bio-persistence. Cancer, we've already -- we toll our employees about cancer but I'm worried about bio-persistence. What he says is, they didn't come to court and they say, all those animal studies we did, they don't mean anything. That literally is what they said. They said, all those animal studies, they don't mean anything.

So it's almost as if, heck, we just spent a bunch of time killing a bunch of mice for nothing. We just spent money and we just spent time killing monkeys for nothing. Everybody in this courtroom understands that this is how we test for human disease. We don't go out and test with humans. We test with animals. And time and time again in this case you've seen that.

Matter of fact, here Michael Siegel is saying, we have to rely on toxicology. We rely on animal data because it takes many, many years to do these studies on humans. We can't wait. We can't wait. We think it's a potential hazard. We have to use a precautionary principle. Don't wait. Epidemiology studies, studies to be done on humans. We take action at the point we believe this is a substantial risk. They did not do that. They did -- DuPont did not do that. And that is part of the conscious disregard.

Ladies and gentlemen, do you really think that they didn't read anything about low doses of C-8 killing a monkey in less than three weeks or four? Is that not important? If it was five weeks, I forgot exactly how long it was, but it was low dose and it killed the monkey. And all you've heard in this case is the closest we have to test what it means for humans is primates are closest to monkeys.

They told their employees that the monkeys died but they sure didn't tell even their employees the truth. And the truth was they admitted that C-8 did it. They admitted. The document shows, we believe C-8 caused this monkey's death.

So the next thing they do to defend themselves, they say, we told everybody everything. We told government agencies, we told the EPA, we told everybody everything. The truth is, this is a company who had been hit 227, 221 times, something like that, for violating EPA regulations, DEP

regulations. Over 200 times.

And here you've got the EPA saying, wait just a second. You've done some terrible things. They list the things. You'll have this document 558 back in the jury room with you. So the next thing you do is you, along with saying, well, we didn't know animal testing made any difference. We just didn't believe it. Why would you even say that in this courtroom? Why would Dr. Rickard get on the stand and say, well, we just killed these monkeys for nothing. That's what he's saying. He's saying all that animal testing didn't mean anything. It meant everything. It told them back in 1988 that the stuff caused cancer.

In a minute you're going to see a document that's even more important about that.

What do you do when you want to defend yourself? You get somebody like Ann Staats. She's supposed to be a regulator. You see, she's a regulator. What you do is you look at this document, 4828, she's the one who put together the CATT study. She put together the CATT team study. 4828, look at the number of times that she's sitting down with DuPont talking about strategy. Why does a regulator talk about strategy with the people that she's supposed to be regulating? Why do they do that?

That's why Michael Siegel said there's a conflict of interest here. You don't do this kind of thing. Amount due.

It goes ahead and itemizes the time she sat down drafting strategy with the company.

Are you comfortable with the idea that that's how regulators work? Of course not. Nobody in this courtroom is comfortable with that. We believe regulators are out there to take care of us until the power of influence gets involved, until the power of -- the power of a corporation like this gets involved. And then you have -- every now and then you'll have a Dee Ann Staats that will surface.

How about this guy? Wow. At some point, honestly, looking at each other, it was almost like he was a cast character for Saturday Night Live. Top of the morning to you. Top of the morning to you. Goes from top of the morning into saying, Gary asked him, Mr. Douglas asked him, didn't you quote one time when you were working for the tobacco industry -- you'll see this guy did work trying to say tobacco doesn't hurt you, it doesn't hurt children. He worked for the tobacco industry. He described his role in what he did as a professional as, Jesus hung out with prostitutes and tax collectors.

That's how he tries to justify what he's doing is thousands of Americans are dying every day from something like tobacco. This is what he did. Jesus hung out with prostitutes and tax collectors. Those are his words. We didn't make that up. He said that on the stand.

Then he says, well, the reason I said it is because I like to use -- I like to get Jesus quotes in as often as I can. That's the caliber of what we saw in this courtroom by DuPont.

No public health safety guy came in here. No industrial hygienist with any kind of degree came in here. Mr. Playtis came in. He had some training, he said, in industrial but he wasn't prepared to talk about these issues. They've got thousands of people up this in Delaware they could have brought here to confront anything we put forward, and they haven't done it.

I want to tell you something. Again, I want to say to you, these lawyers are professionals. It's what we do. Every now and then you've got to say what the company wants you to say if you're defending a company like DuPont.

So in opening statement, DuPont told us -- this is opening statement. As I was sitting there listening, I had to go back and read it again to see if I really heard this. But it was that 3M manufactured it -- they're talking about C-8. 3M sold it to DuPont and 3M provided usage and handling instructions about C-8. You remember that?

He has an MSDS sheet because that's one that DuPont's giving him. He's doing his job. What's the best spin I can put on this? Well, we did everything 3M told us to do. That's reasonable. That's reasonable to do that when DuPont is asking you to do it. DuPont followed all of the usage and handling

instructions it received from 3M. Very clear about that in opening statement. Very clear. These are actual transcripts.

You're going to see the MSDS sheet. That's the information we have from people making it. We checked whether they were complying with all 3M's handing and usage guidelines.

Ladies and gentlemen, I want to save you a lot of time. When you go back in the jury room -- would you write this document down, please, 8195. Please write that down and you'll understand how important this is in just a minute.

When opening statement was taking place, Gary -- Mr. Douglas and I had in our hand the most -- what I feel is the most important document in this case. It cuts through all of this stuff about we didn't know. Cuts through all of the stuff about foreseeability. And we said to ourselves, well, let's hold onto it. Let's hold onto it and wait until Dr. Rickard takes the stand and see if he owns up to the charade, if he owns up to the ploy they have been using in this trial for three weeks. And not Mr. Mace. It wasn't Mr. Mace. Let's see if Mr. Rickard, Dr. Rickard owns up to the truth in this case. We had an argument among ourselves. I kept saying, you know, let's give them a chance. Let's see if they'll own up to it.

When Mr. O'Brien was questioning Dr. Rickard you saw me jumping up and handing him notes and he came over to talk to me and looked like, you know, conferences going on back and forth.

You know what the conferences were? Conferences were this, very clear, do we allow them to tell the truth? Do we allow them to finally come into this courtroom and say, you know what? We got it wrong. All that stuff, we got it wrong. And we have not been even telling you the truth in court. I wanted Dr. Rickard to do that. In my heart of hearts I was hoping that would happen. And the last witness, in the last document, on the last day of this trial.

Let me show you something. DuPont was sent this MSDS from 3M. They were sent this MSDS in 1997. Here it is. This is C-8. No question this is absolutely C-8 right here. Now I want you to look at this number right here. You see this number right here, would you write it down for me, please, because I'll show you how important this is in just a minute. 3825-26-1. 3825-26-1.

Now, the next thing is -- you've seen this. I'm not talking about the fact that they told them to incinerate. Literally every MSDS said incinerate. You got that. You got the idea that none of this would have happened if they'd have just done what 3M told them to do. But what you didn't know and what Dr. Rickard had on the stand that my partner handed to him and we actually said, will he or won't he? I saw his reaction to it. It was like he saw kryptonite. Let me show you the kryptonite.

Warning. This is the MSDS that you're going to have

back in the jury room. The document is 8195. Warning: Contains a chemical which can cause cancer. See that number, 3825-26-1. Can cause cancer. Saying this in 1997, the same year they cut Ms. Bartlett in half to remove a tumor.

Now, it gets worse than that. Look here. 1983 and 1993 studies -- and this is something you have never heard in this trial. Those studies were conducted jointly by 3M and DuPont. Did you ever hear that? No, you didn't. I didn't hear it. And I held this document for three weeks. And we used to joke about the idea, well, this is the truth document. When will we hear the truth? Because this document cuts right to the heart of all this stuff we didn't know. We could have had a way of knowing. Nobody told us. They're talking about cancer in the MSDS sheet.

Ms. Bartlett doesn't get -- the people in the Ohio Valley don't get an MSDS sheet. They don't know about the studies that took place in 1983 and in 1993. Warning: Contains a chemical which contains -- which can cause cancer. C-8 is what they're talking about. It says studies conducted jointly by 3M and DuPont.

Watch this. You know the '83 thing they're talking about, 1983, you know what it was? It was what Michael Siegel told us on the stand. It's what I asked Dr. Siegel about the first time I had him on the stand. It was -- I said, Dr. Siegel, would you explain to the jury how significant the

Leydig cell cancer is? He says, it's important because it shows us that it can cause cancer in humans. And I asked him that four times. Would you please talk about the Leydig cell? You all were probably tired of me saying Leydig cell.

But as I was talking to him about it, I had this document in my back pocket. And I was wondering how long is it going to take for Mr. Rickard to get on that stand, tell us the truth about it and I was going to cross-examine Dr. Rickard but I had Mr. O'Brien do it because I didn't want to -- I just wanted to give him a chance. And they never took it.

Look here. It says 1983 and what's this? The other study was -- other study was the animal triad, pancreas, testes and liver, where animals are getting cancer of the pancreas, testes and liver. And you heard Michael Siegel talk about that. I said, what are the two -- what are the two most important things?

You want to hear something really interesting, Michael Siegel didn't even know that we're holding this document. Michael Siegel had just reviewed the -- just reviewed DuPont's documents. And we're holding this document saying, give Dr. Rickard a chance. Give DuPont the chance to do what's descent and honorable. Give them the chance to show some character and say, yeah, we got it wrong. We never should have come into this courtroom and tried to lead a jury into believing that we didn't know anything. Here it is right here.

If you want to cut through a lot of time, go right to that document on the issue of foreseeability. This is their document, they had it, they knew about it, we showed it to Dr. Rickard and he sat there silent. And he knew why he was sitting there silent. Because it's important.

In the end, what ends up happening is they have this in their file cabinets, 1997. They have in their file cabinets 1988 when they're telling their employees about cancer. And they don't tell doctors, they don't let them know about it. They don't tell the medical community. They don't tell the media. They don't tell the community.

Did you hear them say at one point, I thought I did, I wrote it down, we told the employees and we thought the employees were going to tell everybody in the Ohio Valley. We thought the employees were going to tell everybody. Really? We told the employees and we thought it was the employees' responsibility to clean up our disgusting catastrophe by letting people know that this stuff will cause cancer. That's what I heard. I might have misheard it, but I don't think I did.

Ladies and gentlemen, sometimes chickens come home to roost. And that document right there, that's a chicken that showed up to court and it came home to roost in this trial. If you believe for a second that they didn't know about all this stuff, that they didn't know way before Ms. Bartlett was cut

almost in half that they didn't know about this stuff, go back to this document, go back to connecting the dots and you're going to see how all this fits together really with two documents.

This line right here, you're going to have this back in the jury room. This is 13001. That's the document. It's a composite that shows you how much of this C-8 went into the Ohio River, when it went into the Ohio River, what was going on when it went in the Ohio River, what they knew when it went into the Ohio River, what they covered up when it went in the Ohio River. That's what I want to talk to you about.

First of all, let's start from the beginning. I used this line to show you when they knew something and how much they continued to pollute the river. When they knew something and how often they made the Ohio River into their personal toxic dumping ground so they could save money on manufacturing Teflon. It's the equivalent of somebody -- me going to this man's house and saying, you know what, I got a bunch of sewage but I don't want to pay for sewage service. Let me just dump it in your backyard. Who in this courtroom would tolerate such a thing? Who among us?

And what you have to understand here, ladies and gentlemen, is just because DuPont is a corporation doesn't mean we treat them any different than a person. That's the tough thing about jurors understanding a corporation. Mr. DuPont's

not in trial. Matter of fact, we didn't have much of DuPont coming into trial. But Mr. DuPont has to be treated just like a person. And you have to ask yourself, if you had a neighbor like that?

Here we are, 1975. Here's what's important about this. 1975 they know this. Toxicity is a problem and we're worried about it -- all the way back in 1975, we're worried about contamination of the underground water supplies by Teflon and C-8. They're talking specifically about C-8. And this is 1975. Toxicity and the idea it can get in underground water. And they know what that means. They're not dummies. They understand if it gets into the water, what ends up happening is it gets in the drinking water. They understand that. They got the best scientists in the world. That's document number 4465. That's the first shot.

Second one, second one here is this. I put it up. I'm going to list this because I really -- I don't know how else to do this. If I don't show you the numbers, you're going to have a stack of documents back there. I'm trying to give you the numbers that we think are important. I'm sure they'll do the same thing. But this is kind of the way we see the case.

But in 1975 they know this. Toxicity to drinking water. So how about 1978? Let's look.

1978 says, we are disturbed by the frequency of borderline elevated liver functions. That's 1978. And we're

talking about unusual health problems with workers. This is a medical surveillance, ladies and gentlemen. This is what Dr. Fayerweather saw when he went to DuPont and said, you know what, I need an epidemiology study. I need $45,000 because I'm seeing some bad stuff here. This is one of the bad things he saw in 1978.

So here we go, they know -- put all this together, they know about toxicity, they know it can get into drinking water because it's moving through the underground water. They know C-8 exposure causes elevated liver function.

Doesn't any decent person like -- doesn't any decent person say, you need to know about this out there? You need to know about it, Mrs. Bartlett, you need to know about it because it's in your drinking water. Could be in your drinking water. All the way back. They didn't have to guess and wait about drinking water. This is their neighbor, though. This is their neighbor, Mr. DuPont.

Next thing that happens is 1979. Oh, by the way, look at something. When they learned about the liver problems, when they learned about toxicity in the water, look here. It starts -- they start actually increasing exposure. They don't say oh, my gosh, this is bad. You got liver problems, got toxicity in the water, in the drinking water. They increased production because they're making so much money on Teflon. It's a business decision. And they know if they make enough on

the front, doesn't make any difference what a jury does on the back end because we made all the profit we need to make. So the next thing that happens is this.

It says, this is -- this is 1979 and it says, we should attempt to determine in fluorine in blood levels increases with increasing lengths. This is all about bio-persistence. You're going to see '79 is when they know about organic fluorine blood levels in the blood. Washington Works. So, okay, here we are. This is 1979. Add this up. Look here. It's toxicity by '75. Toxicity they know about. They know it's potentially in the drinking water. '78, they know exposure causing elevated liver functions. 3M warns them that that stuff that causes liver function abnormality can be in your blood for 20 years.

None of these people are told about it. Nobody is told about it. It's a silent -- they're secret about it.

Next thing that happens is -- but by the way, they say, we didn't see any of this coming. We're out in the middle of the road. We didn't see that big truck getting ready to run us over. By the way, after that, predictably, they continue increasing production. They continue making the Ohio River into a toxic waste dump at all of their expense. They pay for it. Tax payers pay for it. It's called externalizing costs. They take the cheap way because they don't want to incinerate, the way they had been told to incinerate by 3M.

None of this would have happened if they'd have just

said, I'm going to spend some extra money. We're going to incinerate. We're going to do what they told us to do which was burn this stuff up. None of this would have ever happened.

So here you've got -- here you've got the next thing that happens. They're telling their -- they're telling their people that, you know what, you need to be aware of this stuff. This is where they start making their people aware. They say -- they ignore the community. They're telling -- they've got people dressed up in space outfits and the people in the community are drinking the stuff that this person is trying to protect themself in a straight -- in a space outfit.

And they say oh, well, we didn't, you know, people didn't come around. People didn't get that much exposure. Yes, they did. They drank it for 20 years. They drank it for 30 years. They showered with it. They raised their vegetables with it. They had their babies playing in the pools with it.

There just wasn't enough there. They tell their people that at work. And you know why? Workers' Compensation. They're worried about being sued by their employees. They're worried about Workers' Compensation claims. They think, wait until we get sued to worry about these folks. Wait until we get sued.

Next thing that happens is they tell their women working -- by the way, after they do that with the employees, they put the pedal to the metal again and increase production

even more, increase profits even more by dumping that waste into their river.

So what happens next is they say, 1981, how many women in the community up and down the Ohio River that are drinking C-8, how many of them do you believe were childbearing age? How many of them were carrying babies? How many of them would have liked to have known, gee whiz, I better not drink the water because it might affect my pregnancy, it could cause a birth defect?

Let me just tell you something. In the end -- in the end they say this never happened. We'll see. In the end, they say it never happened. There wasn't anything to worry about. So they moved the women back. But at least in 1981 they're telling this stuff is so dangerous, if you're childbearing age we want to move you away from it. Get away from C-8.

It's not over on this. This is document 4576. And at this point -- here's what they know. '75 they know about toxicity, drinking water, they know elevated liver function, they know bio-persistence, they know workers need protection, they know women potentially could be exposed to something that can cause birth defects.

They tell nothing to the community. Nothing. Not a word. All they do with the community every time they get a chance to is tell them, don't worry about any of this stuff. We're DuPont. We care about you. We're a great corporation.

They're a corporation trying to make as much money on Teflon as they can, as quickly as they can, passing on the garbage to everybody in this community to make their profit.

Here's what they know. And, again, they keep going up with the production. And then all of a sudden we find out in '82 -- this is important. Ladies and gentlemen, this is an important document. In 1982 -- this is document 363. In 1982, they're telling their employees, don't give blood donations. It's almost like they're worried about spreading an awful disease around the community. Don't give blood donations. That's what they tell their employees but they don't tell the public. They didn't tell nobody anything.

Don't you think people like Ms. Bartlett would like to have known, I don't want to spread C-8 into people's blood. This is what they tell. It's an infected blood. That's the only way to put it. It's an infected blood. It's infected with C-8 and if you give a blood transfusion, it's going to move into somebody else's blood. This is what they tell their employees. But they don't tell anybody in the community about that.

Let's see what they do. They go ahead and -- oh, yeah, here it is right here. After they tell their employees, don't give blood donations, they put the pedal to the metal again and the amount of money they're making, the amount of production, the amount of garbage and toxic waste they're putting into the

Ohio River continues to increase, continues to get more and more.

And this one, you've already seen this. I don't want to spend much time. This is 1984. This is where they're saying, we've been liable for 32 years.

What do they do after they find out after their lawyer, after the people in charge say, we've been liable for 32 years because of toxicity? We've been liable for 32 years because of bio-persistence. We've been liable for 32 years because we don't know where this story ends. We don't know how bad C-8 is in 20 years. How does it end? We don't know. But we do know this. In 1984 they say they've been liable.

But what do they do when their lawyers are saying, hey, pay attention. We've been liable for 32 years. We've got to change something we're doing. That's what this document says. If we don't do anything, we're going to really have a problem. And what do they do? They listen to Delaware and the amount of toxic garbage they are putting into people's drinking water in every family that's using these water facilities continues to go up.

And then here, this is just one of the 3M -- I'm not going to go through all these. You saw all the 3M's. Every one of them says incinerate. Mr. Mace, when he was -- when DuPont asked him to stand up and say that about we follow directions, he's just doing what -- he's doing what DuPont

asked him to do. He was doing what DuPont asked him to do. Don't hold this against Mr. Mace, but do hold this against DuPont.

It says incinerate. This is an industrial -- put it in a commercial facility. This is document 265. There are a dozen of these. They all say incinerate. Some of them say whatever you do, do not put this into the surface water of the river. They're very specific. And they ignore it. Why do they ignore it? That's what some of you all have -- that's what some of you all may have problems coming to terms with because you never want to believe that your neighbor here, Mr. DuPont, would do such a thing. You never want to say somebody thinks like that. But they do. And they do it in the name of profit. And that's a hard thing for a jury to get to understand sometimes because we want to forgive. We want to forget. We want to believe that they wouldn't have done that on purpose. They did.

So I go and I ask Mr. Playtis. I liked Mr. Playtis. I really did. He wasn't the person to come to trial. He's a nice fellow. He really genuinely -- I genuinely liked him and it killed me to have to -- every time I had to get a little hot with him, I didn't like that, because I liked the man. But Playtis tells us the obvious.

He says, you know, if it's incinerated, it doesn't go into the atmosphere. It doesn't go into the Ohio River. It

doesn't go into the landfills if it's incinerated. Mr. Playtis says yes. That's who they brought. They brought Playtis to trial to carry this on his shoulders. They didn't bring an industrial hygienist. They've got dozens of them that know all about it. They put that man up there to say this. He admits it. Yeah, none of this would have happened if they'd incinerated.

Then he goes on to say dumping -- in one way you know this C-8 got in the community is DuPont dumping into the Ohio River. You know that? Right. And you know C-8 was being dumped into unlined landfills. Illegal. Ohio River inappropriate. Incinerate. And you know that incineration was one way that C-8 could be destroyed? You knew that when you took the stand, correct? That's one method, yes. That's what Mr. Playtis said. He knew all about incineration and he wasn't sitting there equivocal about it.

Michael Siegel on incineration said, look -- he said the material safety data sheet is making it clear. He's talking about the MSDS making it clear. This is a public health specialist. This is what he does for his living. He says he's making it clear that this should not be put into an ordinary landfill or put in the collection pond or put into soil or into the -- it needs to be either incinerated or special water treatment. That is exactly what they said. That is exactly what they told you.

But still it continues. Continues going up. The next one is in recent 3M studies indicate a slight but statistically significant increase in tumors. That's 252 they find out about that. Had an increase in tumors in rats. After they find out, Michael Siegel told us, you have to assume that animal carcinogen is relevant to humans. After they learned that, after they learned that document, that's document 252, what do they do? Testicular cancer in tumors, they continue -- it continues to go up after they tell their employees that this can cause cancer. Let's see what happens.

After they tell their employees it can cause cancer there's a little, right here, a little drop right here. Watch this. And then it goes into talking about employee communication. It causes cancer. And when they did -- when they did know about this, the question was, to Mr. Playtis, because he knows more about this than anybody, when they did, they never told the public that was drinking C-8 that it had been characterized as a small C cancer, yes or no? I don't think it was communicated, no. And you would certainly consider it a health risk, wouldn't you? He said, sure.

Up again. More into the river. It just continues.

Even after Fayerweather said, we need to spend $45,000 on an epi study, they say no. What happens? Jot down. Now watch this. Legal thinks that this is our number one problem. Wait to be sued. This is our number one problem. Watch what

happens. Starts going up again. Why? Because they're making profits.

Next thing that happens, they learn about liver tumors. Number 38. The tumor incidences liver, testes, pancreas. This is the document -- that MSDS sheet that shows you where they admit in 1997 that it causes cancer and that they're using studies to evaluate it, this is one of the studies. This is extremely important because if you take this study and compare it to that MSDS sheet, this is number 38. But that first MSDS sheet that we held for so long, if you'll see it right there, it will be right in the document. They're talking about 1993 was one of the reasons that we knew it caused human cancer because of these triad tumors.

Michael Siegel, again, says animal carcinogen substances that we know as an animal carcinogen, scientific principles of risk tells us we have to assume that the substance is also, potentially, a human carcinogen. And this is what they did in Delaware when they said this causes cancer, in that MSDS sheet, that's what they did. They assumed it. But in court, under the leadership of Dr. Rickard here, they have tried to convince you that all those animal studies don't mean anything.

Continues going up. Here they're told, threefold increase in prostate cancer. That document is 6565. This is a study that DuPont did, they participated in. It was their study. Next thing that happens is they're told about liver

enlargement. And you remember the questions I asked Mr. Playtis about, well, is liver enlargement a good thing? You want to have a big liver? He says, well, I'm not sure. I'm not sure what I want.

Then we go into -- it continues going up. We're concerned about the potential long-term human health effects of these materials considering they have biological half-lives and we don't know if it causes toxicity. We don't know how it goes about causing cancer. But even with that, Michael Siegel says, C-8 chemical is bio-persistent, is especially concerning because of the fact that it travels through the blood, touches every organ and the potential to have multiple sites in the body.

Next thing that happens, and that's document 2094, what happens when they find out about bio-persistence, they know about toxicity, they've told their employees it causes cancer, they don't know what bio-persistent means in the long-term. Do they put the pedal to the metal again? Yes. They keep saying profit matters, human life does not.

Our story is not a good story. What do they do after they get this from their lawyer? They're about at the top of the mountain top right here. Right here. This is where Bilott sues them. And do you think this all went down because they were just trying to do the right thing? Didn't have anything to do with that. It went down because they were caught. It

went down because they understood they had a problem.

And it continues going -- even it goes down. This is document number 710, this is our Achilles heel because of water contamination of C-8. Even after that, starts coming down and they say, finally -- business has finally decided there is nowhere to hide. What kind of statement is that, there's nowhere to hide? They've been hiding for 50 years. Nowhere to hide.

And this is Reilly who is their environmental -- this guy is their environmental lawyer. They decided that there's nowhere to hide. Why? Because Mr. Bilott has caught them.

Continues coming down. He says, I can't blame people if they don't want to drink our chemicals. This is their lawyer. This is the guy working and evaluating all this stuff. This is document 563. I can't blame them if they don't want to drink our chemicals.

Let me show you how much they knew. This is really important. Let me show you how much even the lawyer knew about all this. Watch this. He says, it goes into the system, goes in through -- pulls into the intestines. He describes exactly how this happens and then it dumps into the liver, back into the stomach and then the intestines put it back in the blood. And then the liver dumps it back into the stomach because it can't break it down. Then the intestine puts it right back into the blood and then the liver dumps it back into the

stomach because it can't do anything about it. It goes on and on and on and not a soul, not a person with enough decency told anybody here along the Ohio Valley that they were drinking this every day.

And I believe I heard at some point oh, this stuff doesn't hurt you. They don't know if it hurts you. As we sit here, they don't know if it hurts you. That's why they're so worried about bio-persistence. They don't know. They have no idea if it hurts you. But they do it anyway. And that's conscious disregard.

Sure like to be able to say that -- they're talking about -- understand, this is a lawyer talking about the folks in Delaware, up there where Dr. Rickard is. This is a lawyer talking about leadership up in Delaware. He says this. I sure would like to be able to say that they were candid, but getting them to be candid when news is bad is not easy. Candid means they can't tell the truth. This fellow right here, Mr. DuPont, cannot tell the truth. And that's the simple truth.

You saw the Dahlgren study. Prostate cancer, kidney cancer, liver cancer, every kind of cancer imaginable where they studied that up and down the Ohio River. Dahlgren we used -- they made it sound like it was a bad thing that attorneys had to ask -- had to come up with half a million dollars to do this study that they wouldn't do all the way back in 1991. Like that was a bad thing. Like that was bad.

That's the kind of thing that got the EPA interested in what was going on. They saw what was going on. It wasn't a bad thing. They can pay for studies but the people who are trying to protect the citizens in that area, they can't pay for a study? This is the only way it got done. You've seen this. I won't talk -- this is 2005. That's the story. They're talking.

Finally, when they know everything, here's what they conclude. They conclude, EPA has determined that C-8 is a contaminant present in, and it says, it may present imminent and substantial endangerment to human health. And all this stuff about 150 ppb, we had our CATT team come out and they determined it was 150 ppb was a safe level. Look at 4175 and look what happens, finally. Look what happens finally when the truth is told. It is an imminent and substantial endangerment to human health and it is still in the soil. It is still in the water. It is still in these people's bodies. It's in an environment for 2,000 years. 2,000 years.

Ladies and gentlemen, this is one world, one water. We're all connected. Don't ever dream that what happened to those folks down there in the Ohio Valley doesn't have an impact on everybody in this courtroom. It's one world, one water. It's the only world we have and it's the only water we have. And they understand that as much as anybody.

Judge, I believe I'm going to pass.

THE COURT: We're going to take a 15 minute recess at this time, ladies and gentlemen.

(A recess was taken at 10:20 a.m. until 10:37 a.m.)

THE COURT: Mr. Douglas, you may continue with Mrs. Bartlett's closing argument.

MR. DOUGLAS: Thank you, Your Honor.

Good morning, jurors. Probably come as no surprise to you, I guess you figured out that the division of labor over here on our side of the courtroom that I'm probably going to talk to you about Carla Bartlett. And I am going to do that. But I'd like to start with the concept of context and Carla Bartlett, because you heard a lot about context from defense counsel in his opening statement and throughout the case.

It's a very important concept. I'm going to talk to you about the context of how all of what we've heard affects real people, a real person, a real American, someone who braved and faced cancer and lived what was wrought upon her by the actions of DuPont. I'm going to talk to you about Carla and her personal experience about what she went through. So I want to start out with this concept of context.

We have that on the slide. Great.

They love that word context. They love to accuse others, DuPont does, of leaving out context and suggesting that the part of -- that part of the story is left out and that they are going to be the champions of everybody and bring you the

rest of the story.

You know, you remember throughout the course of the trial you'd hear from defense counsel when they'd be questioning witnesses. Well, they showed you this but they didn't show you that. Well, they showed you this, but they didn't show you that. They showed you this, they didn't show you that. It's almost like a dance. And it is a dance. And I'm going to talk to you about, folks, how DuPont has danced around the truth, has danced around the truth for years and years.

And there were many examples of it. Because they are the greatest offenders. When they talk about Plaintiff's attorneys leave out context, I'm going to show you that they are the greatest offenders. Not only the greatest offenders of leaving out context but doing so in important ways and in profound ways. And there are many, many examples of it. And I'm going to start out and give you a couple of them. And I guess the best way to start out is in the beginning. This is the best example of their failure to fill in the context and tell folks the rest of the story.

Let's start in the beginning. The cattle team report. You remember the whole cattle team issue where it all began, the gentleman farmer, Mr. Tennant, and his cattle. The Dry Run landfill. Remember, he sold off a portion of his property so that DuPont could dump some of their waste, which turned out to

be C-8, into the Dry Run landfill which was near by the Dry Run creek which became -- when started to bubble over with black odorous foam. Plants and wildlife dying. Mr. Bilott gets involved.

DuPont and others put together a cattle team. Remember this testimony, they got together. These six, seven veterinarians, esteemed veterinarians. Let's find out why these cattle by this Dry Run land creek are drying, why are they getting sick, why animals are dying, why plant life is dying. They put together -- get this group of veterinarians together to go, please, just go investigate what's happening here. And what's the one thing, we have it in evidence, it's D927. It's one of the last things you saw. It's one of the last things you saw on Friday during Dr. Rickard's cross-examination.

This is the cattle team report. The whole thing gets -- go back in history, this all began with the cattle dying. The gentleman farmer's cattle are dying. Mr. Bilott gets involved. They end up putting together this cattle team to investigate this, this honest investigation, right, of chemical exposure. What's the one thing, what's the one thing that DuPont does not tell these veterinarians? That there's C-8. There's C-8 in the creek, that there's C-8 in this unlined landfill.

And by the way, not only do they not tell them about it, and you saw Exhibit P187, they sort of like boast about it.

Where they say, we never told the cattle team or the EPA about the C-8 in the stream. Talk about context. How do you honestly set out to have these scientists find out what happened to poor Mr. Tennant's cattle without giving them the benefit of what you know, what you know for years prior to 1999 that you've done studies on animals and you know that it's harmful to animals, you know that monkeys died. You know that it caused -- it caused tumors in rats and liver enlargement. You know about the triad of tumors.

You have all of this information. Talk about context. And you let these scientists go out there completely ignorant of all of this -- of all of this information and then you wonder why they conclude, well, we don't think it's anything to do with any chemicals. Because they don't even know what chemicals are in the stream. And they have the audacity -- and you heard it in opening statements, remember to keep in mind context.

How about that for context? How about that they don't tell people, they don't tell the EPA, they don't tell the folks, these veterinarians? But the most important thing that got this all started and think about what would happen if they did tell them and these veterinarians weren't blindfolded in their mission to find out why the cattle were dying. We probably wouldn't even be here today. It would have ended right then and there.

Here's another example of context. Remember when Dr. Rickard -- I call it the Dr. Rickard flip-flop. I had asked him about the epidemiology review board. You recall this also happened on Friday. The epidemiology review board where these esteemed epidemiologists and Mr. Papantonio talked to you about these scientists, they didn't want folks to know everything. By the way, the cattle team not knowing about C-8 is just another example of that.

They put together this epidemiology review board and -- to allegedly, because they want to have all the appearances, oh, we're studying this diligently, we're studying. They hire these folks from these esteemed universities, they put together this board and what does the board tell them? They put in a memo and they say, hey, you're not being candid with us. They say, given the many gaps and understanding of population exposures to PFOA and the possible health consequences, we strongly advise against any public statements asserting that PFOA does not pose any risk to health.

Because we know that's exactly what they were out doing. We saw all of their public announcements, all of their PR announcements. There's no evidence that it's harmful. They're telling the folks it's safe to drink the water. Here are these outside epidemiologists saying, you can't say that. You shouldn't go around saying that.

So I asked -- you heard the tape, you heard the

videotape of when I took Dr. Rickard's deposition. I asked him, did you receive this? Because look, it's to Michael Kaplan, copy to Bobby Rickard, epidemiology review board. I asked him, did you receive this? And he says, yes. But he comes to court and he says oh, I must have been mistaken. Because they can't acknowledge that even these outside experts are telling them, you can't go around telling people it's safe to drink the water.

He's got to dial that back so he flip-flops and in court says that's a mistake. What do they do? They portray it as if we did a trick lawyer question at the deposition. What they didn't tell you and the context that was left out is that Mr. Mace was sitting right next to him at the deposition. If there was some kind of problem with the nature of this document, they could have said so then. But they had to think about it. They had to come to trial, how are we going to explain this one?

By the way, listen to his answer. In court today he denies he received it. Look at how quickly, look at how genuinely and honestly and candidly and spontaneously he says, yep, I got this document.

Play it, please.

- - -

Thereupon, the recording was played in open court as follows:

Q. I've handed you Exhibit 23 which is an e-mail dated February 24, 2006 to Michael Kaplan, copied to you and some other folks. Do you see where I'm referring to?

A. Yes, I do.

Q. And as you sit here today, do you recall receiving an e-mail around that time in February of 2006 from the epidemiology review board?

A. Yes, I remember this.

(End of video clip.)

MR. DOUGLAS: He remembers this, the document, that he now says, he flip-flops, I didn't get, I made a mistake. I got a different document. Okay. That's fine. But to suggest that there's some lawyer trick going on here. They want to know, did he get it? Why wouldn't we ask him that question? The context. Mr. Mace, his lawyer, sitting right next to him the whole time.

And then here's another good example of context. Remember that whole charade with Dr. Dourson, top of the morning, gentlemen, that compared himself to Jesus. And he said on direct examination oh, yes, I'm here pursuant to subpoena. And this is important. It might seem like a small example but it tells you everything you need to know about what DuPont does. This is just like breathing to them. We've seen this for decades.

This whole charade about a subpoena. I get up on

cross-examination, I said oh, you're here pursuant to subpoena. And he came with his little birth certificate or whatever that little certificate was that they gave him from the Department of Environmental Protection in West Virginia. So proud of it, he framed it himself. I was wondering, how would he know to bring his -- how would he know to bring that little certificate? He goes up to the witness stand and is holding it, you know, ready to show it just in case, maybe he had a hunch that Mr. Mace would ask.

So I'm thinking, this is planned out. And they want our jury, who sat here for weeks, to believe that he's some independent person that only came because he was subpoenaed. But it turned out, that was a complete charade.

Think about that. You know, you've taken time out of your lives. It's hard enough to figure out a complex case like this. It's hard enough, folks. But when the little charades take place in the courtroom to mislead you down a path that he's this objective, independent scientist -- which he's not. I'll get to that in a second. Then that makes your job even harder.

It turned out he spoke to Mr. Mace weeks ago. They're talking about the case. He set aside last week. This guy that would have you believe he's here -- they made me come. I wouldn't have been here. I'm here because the law required me. It turns out he's not so objective.

Speaking of charades, by the way, the whole thing, it really goes to the heart of the case. Not just one little example. Like I said, it's just like breathing for them. They just operate that way. They want you to not see the real story, the rest of the story. When we heard about rest of the story, the rest of the story was he really was coming anyway. He didn't need to be subpoenaed.

Speaking of charades. The whole thing -- this one is more important and profound. Dr. Rickard on that witness stand being asked by Mr. Mace, and what was your reaction? What was your reaction when you found out in 2012 about the science panel that C-8 can cause kidney cancer? He had the look of shock. We were surprised. We had no idea. I think his word was surprised. With the look of shock.

Really? Really? You've been here. You've seen all the evidence. For decades they've been looking at it.

Can I see the worker study?

1989. Remember this, 1989 Washington Works cancer incidences and overall mortality rates.

Go to the next slide, please.

It says, there was a statistically significant excess of kidney and other urinary cancers. Really? Surprised, in 2012, like this came out of nowhere. That's part of the charade. That's part of the leaving out the rest of the story. That's part of taking everything out of context with blinders on.

Let's go to the next workers study. 2003. Now this is nine years before the surprise of 2012. The SIR, that's the incident rate for kidney cancer is 2.30, that's 230 percent. We learned that. With a 95 percent confidence. It's statistically significant. These numbers indicate an increased risk for kidney cancer.

Surprised by the 2012 science panel? And I'm not even talking about the monkey dying and the rats and all the animal and toxicity studies. How could you be surprised? It's part of the charade, folks. This is a court of law and a court of evidence. Let's just get the facts out and let you folks decide.

Let me get back to Dr. Dourson. We were accused of taking something out of context.

Could you put up the pie chart?

This is the dance around the truth. Remember I went up and on cross-examination I showed -- I showed the witness this page because Mr. Mace showed a different page from the website that showed all their government work and a whole list of things that they've done, apparently they do, at least that's what they allege they do. I just wanted you to see the rest of the story. But they have the audacity to accuse us of taking something out of context.

The rest of the story, folks, is that they didn't tell you about all of these chemical companies and law firms that they

do work for. I wanted you to have the context. But this was just the tip of the iceberg because it turns out --

Can we show the article?

You remember. Here he is. Dr. Dourson, top of the morning. He admitted, there are lots of folks throwing rocks at me accusing me of being biased in favor of industry, the guy who comes here with the charade with the subpoena. Make you think that he's completely neutral. Oh, I'm neutral.

It turns out it's an investigation by the Center for Public Integrity, Inside Climate shows that the firm has close ties to chemical manufacturers, tobacco companies and other industry interests.

Let's go to the next slide.

TERA goes out of its way to describe itself as a nonprofit. Didn't he do that for you? This is what he does. It's a dog and pony show. To emphasize it works for government. That's just what he did in this courtroom on direct. Not just for industry. When, in fact, Dourson and his group engage in industry-funded activities all the time, said Richard Denison lead senior scientist at the Environmental Defense Fund.

Next file. It's all from the same article.

Two-thirds of the resulting -- then you'll see that this is also about he does a lot of work in Texas. Dourson is a close friend of Michael Honeycutt who heads the toxicology division at the Texas Commission. His department has evaluated toxicity

of 45 chemicals since 2007 through its risk assessment program. Two-thirds of the resulting guidelines are less protective than they used to be.

Bingo. They had one part per billion, they bring in TERA and suddenly it's 150 parts per billion. Like magic. Wonder how that happened?

Any more slides on this?

The EPA -- this is important. The EPA's integrated -- this is why when Mr. Papantonio is talking to you about, you know, they have to be transparent and they have to provide the information to the EPA, DuPont does. It's the company has the obligation. This is a free society, folks.

The EPA's Integrated Risk Information System, IRIS, has evaluated less than one percent of the roughly 84,000 chemicals registered with the agency.

You know, our EPA can't do it all. They have to depend on the honesty of Mr. DuPont to be forthcoming and let them know. That's the rest of the story on Mr. Dourson.

Then I want to talk to you about the granddaddy of all of the lack of context that you got from the defense side from DuPont in this case, the lack of candor.

Can we get the MacIntosh chart up, please?

This is what I call the granddaddy of them all. I'm going to talk to you about Dr. Cohen, about this obesity issue and of course about the reason we are here, Mrs. Bartlett.

You remember Dr. MacIntosh, the Harvard professor who testified early in the trial, talked about all of these how many -- how much was in the water. This is all uncontested. This is all uncontested. How much was in the water. He based that on the science panel chart.

Dr. Cohen comes in here, who's apparently also a public health official, according to Dr. Rickard, and it's like there's an expression, the horse in the corner. You ever hear that expression, folks? It's like this big giant horse that sits all around in a corner making all this noise kicking and bucking and all this kind of stuff. That's what this is. The whole time he's testifying on that witness chair right there he's completely ignoring the C-8 exposure. Not a word, not a peep about it.

Year after year after year after year of exposure. Every year multiple times more than .05. Dr. Cohen, the eti --

Where is that? I'll find it later.

The self-proclaimed etiology expert. I'm an expert in etiology. Remember, Mr. Mace wrote it down? Does not give an opinion about that. That's context, folks. That's this. That's what this case is about. I don't know what case they came to testify about. That's the context that they laid out. They have the audacity to say, they showed you this but they didn't show you that.

Speaking of Dr. Cohen, I think we were all sort of

surprised to learn that he gave, as we learned only through my questioning, no opinion, no opinion about the cause of Mrs. Bartlett's cancer. He talked a good game about obesity. He talked a good game about how long her tumor would be there, it could have been there. Talked a good game about her blood levels of C-8. But at the end of the day he gave no opinion, right? I made that crystal clear on my recross-examination, no opinion about what caused this person's cancer. And we know, folks, he's willing and able to do that because he's done it before, to give an opinion as to what caused somebody's cancer. Apparently he's got a resumé this thick that Mr. Mace is going to want you to look through where he's looked at causation issues, studies, published. Not a single word about it, about what caused her cancer in this case.

And as I said, he's willing to do it. He's traveled around the country. He's earned hundreds of thousands of dollars in litigation. Always for Defendants, including DuPont, we learned, in another case, eerily, where somebody was claiming to have gotten kidney cancer from DuPont's chemicals and pesticide. Remember, that's the case I talked to him about in Tampa, Florida. He went to court and said, DuPont's chemicals did not cause that cancer. By the way, he did not say --

Could you put that back up?

He did not give an opinion as to whether this did or did not cause Ms. Bartlett's cancer but he did give an opinion,

apparently, in the other DuPont case that DuPont's chemicals in that case did not cause the cancer in that case. He also testified in that case that obesity -- he argued that obesity contributed to that person, that poor guy's kidney cancer.

So we know he's ready and willing to do it, but he gave no such opinion in this case. What does that tell you? What does that tell you?

It tells you exactly as I told you in my opening. That no doctor, no person would walk through that courtroom door and sit in that witness chair and tell you that C-8 -- tell you, number one, that C-8 did not cause her cancer or, two, that obesity caused her cancer.

But I got the feeling when he was doing his -- when he was testifying that, you know, it seemed like he had that opinion, right? You know, he's talking about obesity, he's talking about her BMI, he's talking about all these things and the length, how long the tumor was there. I said -- I leaned over to Mr. Papantonio and said, you know, I think that they have the idea that he has -- he's giving an opinion. We know he's not. And so I made it crystal clear for everybody. He gave no such opinions in this case. But they'd like you to think he did, perhaps.

He talked to you about the age of the tumor. Here's another one of these perfect examples of leaving out context and leaving out of the rest of the story. He talked a good

game about the age of the tumor. He pulled out one page from a textbook. Remember this? He opened up a textbook and there was growth rates of tumors. We know that in -- we know there was a 3-centimeter or so tumor that was removed in 1997. So the question was asked of Dr. Cohen, can you tell us how long that tumor had been there? And they opened up this textbook and they find this statistic. Renal cell carcinoma grows at a rate, an average rate, of .28 centimeters a year. Folks, you do the math, you divide 3 point whatever the size of the tumor was by .28 it's about 11, 11 and a half years. So '97 -- first of all, that would take you back to '86. She still has all of these years of exposure anyway.

Then they throw in oh, some of them can take as long as 20 years. Let's speculate. That's another word I know it's on Mr. Mace's -- speculation. We can't speculate. This is a court of evidence.

So but here's the point. We know and we heard there are some tumors that grow fast, some medium and some are slow. And they picked out a page out of a textbook which is an average. You know, the average of one and twenty is 11 and a half. Is it 20 years, her tumor, was it one year?

THE COURT: Ten and a half.

MR. DOUGLAS: And Dr. Cohen ignored the rest of the story. The rest of the story, folks, is what Dr. Bahnson told you about. And you remember, we have Dr. Bahnson from the

James Cancer Hospital. He didn't just pick a number out of a textbook that may or may not be relative to this particular case. He considered all of the context. He considered everything.

Can we just have the testimony?

When I asked him, not just based on the size of the tumor -- okay. Context. Dr. Cohen just wants you to look tunnel vision, what's the size of the tumor. Now let's get the one page out of a textbook.

Not just based on the size of the tumor alone but everything about the patient that you understood at the time, can you give us a range as to how long the tumor had been there, please. And he goes on to talk about, yes, it would be -- I would predict that it could have been there as long as three years and more than a year. It was some comment I recall that suggested that he had said six months. There's the answer to the question. Between a year and three.

What's that based on? A page out of a textbook without context? No. I reviewed images from six or seven months before I ever saw her. That's important. That's the rest the story. That's part of it. I considered the grade of the tumor. Those are factors that I would say -- I'd estimate it has to have been there for more than a year. And it could have been there for up to three years.

Next slide.

That would also be based -- he goes on. He's finishing his answer -- on my clinical observation. What is that? Of some people who we've chosen to watch with these small cancers because they're not good candidates for surgery. It's based on experience watching tumors. There are patients where they're not going to do the surgery. They have to watch, have the patient come back and they watch the growth of the tumor. He's talking about -- we're talking about a real doctor from a real cancer hospital who really knows tumors as opposed to pathologists.

Remember Cohen -- Dr. Cohen is a pathologist. He hasn't seen a patient since 1975 with kidney cancer. He can't -- he works in a laboratory and looks at specimens under a microscope to the exclusion of everything else.

Dr. Bahnson came in and testified about the rest of the story. Not a page out of a textbook. And he told you that this tumor, based on his real-life experience, treating thousands of cancer patients, one to three years. And the reality is that some tumors grow fast, some are slow, and some are in between.

And consider this. C-8 -- and why is this important? Because, look, if you go back to all of those year after year after year after year of exposure it's important. They want to push it as far back in time. And some cancers are aggressive.

Think about this. The science panel found that it only takes a year of drinking this amount. One year of .05. That's a pretty aggressive cancer. There are other cancers, we all know, smoking, asbestos, take a lifetime of exposure before something may happen. This one, all you need is a year.

I know that's not growth rate. Don't get me wrong. But that's a pretty fast-acting cancer. And we got an opinion from a real doctor who really treats kidney cancer patients who said it was between one and three years.

Let me briefly talk to you about this obesity issue. First of all, I'm not sure that it wasn't a complete waste of time. It was interesting. We had an interesting dialogue, Dr. Cohen and I, about what's in the scientific literature and what's not in the scientific literature. Because at the end of the day, it's not relevant. Nobody testified that obesity played any role in causing her cancer. So I'm not sure it wasn't a complete and total waste of time.

Unless they want you to put -- they want to put doubt in your minds about Dr. Bahnson. Oh, he didn't -- he's improperly thought this through because he dismisses obesity as a cause. But there's not a scintilla of evidence, folks, that obesity caused her evidence.

Can I have the scales of justice? Thank you.

I want you to think about this. We can put C-8 on one of those scales. If you're thinking about, what caused her

cancer? Was it the years and years of C-8 exposure?

Can we put that slide up?

Was it all that? And we saw the multiple, multiple years at many times more than .05 on one scale. That's evidence in this case.

What evidence can we put on this scale to weigh these two factors about obesity? Nada. Nothing. Nobody testified. Look through her medical records that will be in evidence. Not a single one of her doctors ever said obesity. Lose weight because your cancer may come back. Risk factor. You know, it lists risk factors in medical records. There's nothing in there about obesity had anything to do with her cancer. All of these many doctors over all of these many years.

There's nothing you could put on that scale. And so the result is there's no other conclusion to reach unless you speculate and maybe they just want you to speculate, but you cannot put speculation on that scale. You'll hear from the Court. You cannot speculate. It's a court of evidence.

So we went through this little dialogue with Dr. Cohen and picked out ten -- I think at the end with redirect they went through 10, 11 or 12 articles out of the millions and the scientific literature. They picked out 10. He said there were 20. I think they talked about 10. Maybe it's a little more. I'm sure I'll be corrected if I'm wrong. That most of which say there's an association. A risk, not causative risk.

Remember, there's an important distinction. We know C-8 can cause cancer. A risk factor is not something that's yet been established to be a cause. It's just a bow-tie association. The bow tie doesn't make you intelligent. Remember Dr. Bahnson's analogy?

The point is that there's a debate in the scientific literature. The American Cancer Society, for example.

Can we have that slide, please?

We do not yet know exactly what causes kidney cancer. How about the World Health Organization? Some can -- what are the common health consequences of overweight and obesity? Some cancers. I don't see kidney cancer listed there. That's the rest of the story. And the rest story is there's a debate and a dialogue about it.

And I was struck by the fact that Dr. Weed was not here. He is not a pathologist. He's an epidemiologist. They brought epidemiology studies in here to try to convince you that obesity is a cause of kidney cancer.

You remember Dr. Weed. He was the other expert that they hired but did not bring and he is an epidemiologist. Dr. Cohen referred to him as one of the gurus of cause and effect.

Can we play that?

You remember what Dr. Weed said. I took his deposition and I asked him about this obesity stuff. Just play that.

- - -

Thereupon, the videotape was played in open court as follows:

Q. So you don't know whether it's generally accepted or not as to whether obesity is a causal association for renal cell carcinoma? You don't know?

A. I didn't say that. I said --

Q. Do you know?

A. What I said was that what the literature that I reviewed says is that obesity is a risk factor for renal cell carcinoma. I also said that I had not seen a statement laying claim to causality.

Q. Okay. And do you think you did a pretty thorough review of the literature on the subject?

A. Reasonably thorough, yes.

Q. So would it be fair to say that based on your research it is not generally accepted that renal -- that obesity is considered a causal risk factor for renal cell carcinoma?

A. It's like I said before, I haven't seen that statement. I would say that it is generally accepted. It's a risk factor.

Q. But not a causal risk factor?

A. I haven't seen that in the literature.

(End of video clip.)

MR. DOUGLAS: That's the epidemiologist. Interesting that they didn't bring him to testify but they chose the

pathologist, the guy who travels courtroom to courtroom to talk about obesity causing cancer or not chemicals or the drug manufacturer. What does that tell you about context and the rest of the story?

And they have the audacity to criticize -- and they will. You're going to hear, Dr. Bahnson did a terrible job. You can just discount his opinion all together because he did a terrible job of figuring out this mystery of what caused Ms. Bartlett's cancer. The defense would truly have you believe that this man, the department chair at the James Cancer Hospital is some type of extremist, some guy out on an island of ignorance and that they, their experts, or their expert, Dr. Cohen, are the true voices of reason on this planet.

The pathologist who sits in a laboratory and looks at specimens and hasn't seen a patient in 30 years. That person, Dr. Cohen, had the audacity to criticize Dr. Bahnson for not taking a proper family history. You remember Mr. Mace's family tree that he drew? It's all well and good to do that here in the cold confines of a courtroom after the fact when you're representing someone that just got sued for causing somebody's cancer. But the pathologist who doesn't even take a history is criticizing Dr. Bahnson? Seriously?

Skip that next slide.

President Johnson once said -- and I'm going to clean this up a bit, he spoke with some colorful terms. President

Johnson once said, any mule can kick down a barn but it takes a good carpenter to build one. And I submit to you that in that analogy, you know, Dr. Cohen is the mule just kicking down the barn but it takes a competent cancer doctor like Dr. Bahnson to build one. Just came in to knock it down.

I just want to talk to you briefly about blood levels.

Let's put up the first slide.

The blood levels were taken in 2005 and found -- she's found to have 19.5 parts per billion which placed her -- next slide -- as you heard in the 99.6 percentile meaning less than one half of one percent have more blood -- have more C-8 in her blood. In other words, she has more C-8 in her blood in 2005 than 99.6 percent of the United States population, according to this study. And I want to -- and so they need to explain this away and they're going to tell you, oh, but that's nothing compared to other people who had 80 parts, the workers or the rats or the monkeys, as if that makes it okay because they want to tell you, well, she doesn't have enough in her blood to cause cancer.

But I want you to come back to what I told you was the beacon in the night. This is what you're going to be asked to determine in terms of whether her cancer was caused by C-8. This is the beacon in the night. A lot of numbers you heard. Parts per billion in the water, parts per billion in the blood. This will guide you back to shore. When you're thinking about

whether C-8 caused her cancer, this is the issue and we know and we saw year after year after year of exposure.

By the way, here's something else that concerned me.

Can we have Dr. MacIntosh's table again?

The year her blood was sampled was 2005. You see this .12 parts per billion in the water at that point in time. Dr. Rickard told us the concept of the less C-8 in the water that you're drinking, the less will end up in your blood. Common sense. He made that point when he's talking about oh, today, because the filters are on in 2006, Ms. Bartlett would have virtually background levels of C-8 by this time. But the opposite is true, Dr. MacIntosh told us, that the more C-8 that you have in the water, the more will be in your blood.

So look at this. In 1995, two years before her cancer surgery, it's not .12, it's .44. That's three and a half times more C-8 in the water. So therefore, her C-8 would have been much higher, three and a half times higher potentially. So think about that.

But at the end of the day, this is what matters. At least one year, and she had multiple, at least .05 and each one of these years was several times higher than .05.

I want to talk to you now in my remaining few minutes about what we call in the law, damages, capital D, about the person, Carla Bartlett. I talked to you in opening statement. I told you she's salt of the earth. She typifies everything

that's great about America and Americans.

In her own ordinary way doing extraordinary things like facing death, facing cancer, facing the uncertainty and facing the -- amazing how, as Americans, when it's time to get going, we get going. When she was called that day on the telephone and she started shaking and she called her husband Jon, he's here in the audience. And so they prayed together and she worried and wondered whether she'd see -- live to see her son and her stepson grow up and what would happen?

These are things. Is it unreasonable? Are they going to say our fear of cancer is not reasonable? Walk a mile in another man or a woman's shoes and say that. It wasn't reasonable for her to fear that the cancer would come back. And you know, she does live in fear. Especially you heard them say now that I heard about bio-persistence. And she's still drinking --

Could you put the MacIntosh --

Bio-persistence. Look at this. All of these years after her cancer, .85. That's not just .05. That's time -- many, many, many times more. This is after the fact. Coursing through her blood. Her God-given organs. And we're hearing about bio-persistence for 20 years. Walk a mile in her shoes, I say to anyone who says that her fear of cancer is not reasonable. And she described the pain of being cut in half to remove the cancer from her kidney caused by years of exposure

to the cancer-causing water.

Play the animation, please.

This is just an animation but Ms. Bartlett lived this. She woke up from that surgery in agony. And she talked to you about it. The rib being cut from her body, the worst pain she ever had in her life. Remember she talked about the painkiller button, kept pressing that button to take away the pain. She woke up with the dry heaves. Imagine that. Dr. Bahnson called it agony. That was his word. Anybody who's had that kind of a rib removed, it's agony.

I'm sorry, it's just necessary to do this.

The ride home from the hospital. How about the ride to the hospital, wondering with her husband, that long ride to Columbus to a cancer hospital, unimaginable that she'd ever be in this situation? That's all part of this case. Her mental anguish.

You're going to be asked to decide -- there's a question on the jury verdict sheet that has to do with emotional distress. I'm going to show it to you in a second. It's going to ask you to find in her -- whether you find in her favor or not for emotional distress. And if you do, how much to award her for that emotional distress, the mental anguish that she went through. It's part of this case. Not just the physical pain, folks.

Her ride home from the hospital. Remember she talked to

you. This is real stuff. This is real life. This is what really happens when you drink cancer-causing water and have to be cut in half and survive that. You know, it's easy to say here in the cold confines of a courtroom after the fact but I want you to think about what she testified to. Because the case is about compensating somebody for pain and suffering and her mental anguish.

The yearly CAT scans every time wondering about the results climbing into that CAT scan machine, injecting the dye. You think that's comfortable? Drinking that terrible tasting chalky water that she described. Traveling every year, getting in the car with her husband who faithfully drove her every year for her yearly follow-up for nearly ten years. Wondering each time is it going to be good news/bad news.

So I've reached that part of my summation where I'm going to talk to you about -- we've decided I'm going to talk to you now about compensating the plaintiff for everything she's been through. And this is not to be presumptuous, folks. We understand that you will first address the issue of liability or in other words, whether the defendant DuPont is negligent.

You're going to see a verdict form, not as big as this one, and it's going to say, do you find in favor of Mrs. Bartlett on her negligence claim, yes or no? And you're going to be asked to make a decision. That's our case. That's

the main case against DuPont that they were negligent.

They dumped it in the water. They should have incinerated it. They should have listened to Dr. Karrh back in 1982 and '89 when he said, we have to prevent the general public from being exposed. That's negligence. That's the reckless disregard. That's what Mr. Papantonio was talking to you about. Conscious disregard for people's health and safety. That's what this is all about.

If you say yes, and we believe that there's really no other way to view the evidence in this case, then you're asked a second part which is, if you found in favor of Mrs. Bartlett, what damages, if any, do you find Mrs. Bartlett is entitled to on her negligence claim? That has to do with her pain and suffering. This is what we're talking about. That's the first question.

There's another question. Do you find in favor of Mrs. Bartlett on her negligent infliction of emotional distress? That has to do specifically about her mental and emotional distress as a result of what happened to her.

The Judge is going to tell -- define what these are. What is negligent infliction of emotional distress? Judge Sargus is going to define all that for you after summations are over. He's going to define to you what negligence is. If you answer yes to that, you'll be asked to award a sum of money.

My time is running out so I'm going to start speaking faster than I normally speak.

But this is important. How do you equate somebody's pain and suffering or mental anguish with a sum of money? No sum of money could ever take away what she went through. We know that. But jurors are asked to do it because it's about accountability. It's about holding somebody accountable. It's about holding Mr. DuPont and the decisions that were made by the folks that work at their company accountable for what happened. As I said in my opening statement, we all know there's not enough accountability anymore in this world. And it applies to folks like Mr. DuPont just as it applies to me or anybody else in this courtroom.

We're going to ask you to hold them accountable. And the only way we can do it in our civil system of justice is to award a sum of money that accurately and fairly compensates this person, this human being, this American citizen who was harmed and experienced pain, anguish, suffering. So how do you do it?

We do it all the time just by going to a pharmacy to spend five bucks on a bottle of aspirin. We made a decision five bucks is worth it to take away the pain. We spend millions and billions on cancer research, on wiping out disease. It's worth it. We do value, we do place a value on pain and suffering.

I know there are people out there -- by the way, let me just dial this back just a second. This is just our suggestion. This is entirely up to you. You may hear what I'm going to suggest and say, Mr. Douglas is crazy. What did he say? That's way too high. You may say, Mr. Douglas, you're crazy, that's way too low. It's your decision. But we have a right, we can exercise that right to suggest something.

There are people that are crazy enough out there that if you said to them, you know, I'll give you a million bucks, I'll give you multimillions, all you got to do is cut yourself in half and remove part of your kidney and you have to live the rest of your life wondering whether or not you can get kidney cancer. There are people crazy enough that would say, I'll sign up for that.

And I submit to you that Mrs. Bartlett is not such a person. She'd never bargain for that. But when she went under that knife, and she described it for you, she's got that what she called that big and ugly scar from here to here that is a reminder every day when she gets dressed of what she went through. When they cut her open, when the good Dr. Bahnson cut her open to remove the cancer that was caused by the cancer-causing water, that was a million dollar moment in her life. Who would ever sign up for that? I'm not going to give you a specific amount. And that's just for starters, folks.

Then the painful recovery, the mental anguish,

everything I've just talked about. We submit to you that this case is significant and they're going to try and portray her as damaged goods. What was that all about with Ms. Niehaus talking to her about all these other surgeries?

Put up that slide, that last slide, please.

I've just got to make this point really clear because I don't think this point was made clear.

The last slide, the doctor slide.

This is from Dr. Batten's records. This is from the year of her surgery, 1997. It's Plaintiff's 2.34.5. In case you got the impression when counsel was questioning Ms. Bartlett that she had all of these problems and she was physically a wreck, look at this. Heart attack -- no heart disease, no blood pressure, heart failure. You go down this whole list. She's got everything's a no. Everything is a no. She didn't have any of these problems. The only problem that they checked off yes was bladder or kidney problems and that's what she was there for, her kidney cancer.

One could say that everything afterwards, after her kidney cancer, everything went downhill for her. She had the back issues. She had all these other issues that really have nothing to do with this case.

So for Ms. Bartlett, who is a relatively healthy person who underwent this kidney cancer surgery, I suggest to you that this is a case of significant value. They're going to diminish

her as damaged goods. She doesn't get -- deserve to be compensated. Everything else that happened to her in her life, there were other surgeries in her life that were painful. So what? Walk a mile in somebody's shoes before you start diminishing what they went through.

I'm going to leave you with one last, final thought. Please, if you find in our favor, we suggest that you should award an amount of money that is significant, that reflects the significant pain and suffering and experience and fears that she went through. You're going to hear about it was stage 1, it was time to celebrate, it's good news, it's nothing, you know, she's cured and all that stuff. Likely story if you're representing the company that got sued for all this. Of course they're going to say that. But it's up to you. It's up to you folks in the jury right now.

I just want to tell you there's two other pages in the verdict sheet. This is for the total amount of damages. There's a question about the total amount from the first two questions. And then there's a question, and this is what Mr. Papantonio was talking to you about, where you're going to be asked about, have we proven by clear and convincing evidence that DuPont acted with actual malice and that Mrs. Bartlett has presented proof of actual damages that resulted from those acts of failures?

This is a textbook case, folks, of malice, of disregard

for Mrs. Bartlett and everybody along the Ohio River and Tuppers Plains and all the other water districts that were unknowingly drinking cancer-causing water all of those years.

I want to thank you. We will have an opportunity for a brief rebuttal after you hear from Mr. Mace. And Mr. Papantonio is going to speak to you in rebuttal. I want to thank you for the incredible time and incredible effort and clearly the degree of what you're paying attention and taking notes.

Thank you, Mr. Bilott for trusting me with this case, this important case. And thank you, Mrs. Bartlett, for the honor of representing you. It was truly an honor.

THE COURT: Thank you, Mr. Douglas.

We're going to take a one hour lunch break at this time, ladies and gentlemen. We'll recess for one hour.

(Thereupon, the jurors exit the courtroom.)

THE COURT: Mr. Mace, you indicated you had a matter?

MR. MACE: We do, Your Honor.

Judge, you had given us some guidance, which I respect, many Judges do, not to be a jack in the box during closing argument, but for purposes of appeal I do need to note for the record our objections.

There were numerous, numerous violations of motion in limine rulings the Court has made. Motion in limine number 19, probable testimony of a witness not called as a witness.

Motion in limine 6, comparisons, analogies to other industries. Birth defects, they misstated what the holdings were, they misstated your Court's limiting instruction. They left open the possibility both with regard to cattle, birth defects and other things, that we still don't know what's going to happen. Directly flying in the face of the science panel's rulings. They talked about other acts, implying that these 200 some violations related to C-8 when they didn't.

They also, Your Honor, and we had noted earlier in the record but just to make sure the record is clear, we think it's unfair prejudice to allow them to comment on Dr. Cohen not giving an opinion on specific causation when the Court had made a motion in limine ruling on that. We're not supposed to get into motion in limine rulings. Very unfairly prejudicial to imply to this jury the man had no opinion when he obviously had a very clear opinion that Your Honor didn't let him give.

So those and some other respects. Those are the main ones.

THE COURT: I understand making a record. But I also understand in the form of making an objection. Now, what do you propose is a remedy here? Their closing argument is over with regard to everything but rebuttal on the plaintiff's side.

MR. MACE: The jury should be told to disregard each of these issues.

THE COURT: I'll hear from Mr. Papantonio or

Mr. Douglas on each of these.

MR. PAPANTONIO: Your Honor, I'm trying to evaluate the issues. First of all, the reason that we're put in the position of commenting about experts to begin with was that DuPont has intentionally tried to try this case without calling experts but suggesting to the jury by innuendo and supposition, for example, that Mrs. Bartlett suffers from cancer because she's overweight. They had the evidence to do it. They had the experts to do it. They simply didn't call the witnesses because those witnesses did not rise to the standard under the Daubert test.

THE COURT: Let's stay with Dr. Cohen for a moment. As you know, I excluded his ultimate opinion testimony in this case. When we were wading through his testimony, my ruling was that he could be asked has he given an opinion as opposed to did he have an opinion. Perhaps a subtle distinction but that would be accurate to what he was doing in this case. He had an opinion, he just couldn't give it. And he hadn't given one.

Mr. Douglas may have a better memory of this, and so may Mr. Mace. I didn't hear -- I heard he didn't have an opinion in the close.

MR. DOUGLAS: I have it in big bold letters in my outline to make sure I used the words that conformed to the Court's ruling. Did not give an opinion.

THE COURT: And then the issue of the birth defects in

the cattle have been addressed with the jury multiple times with the instructions that we had worked through. So I am going to overrule that as any sort of new issue that they wouldn't be familiar with. They've already been told that those were not matters that turned out to be true but could be used as the issue of notice to DuPont.

Then the last issue as to witnesses not called. I'd like you both to address that. Starting with Mr. Papantonio.

MR. PAPANTONIO: Your Honor, the reason we were put in this situation about witnesses not called is, again, when you look at the totality of the way that this case was tried by DuPont, it's virtually impossible -- other than us to sit silent and have the jury believe, have the jury believe that, for example, Mr. Playtis is the guy that should be in here talking about industrial hygiene or that the toxicologist, Dr. Rickard, should be talking about public health issues.

I think for us not to bring that up is, first of all, to make the leap that we really believe that what Dr. Rickard said as a toxicologist has any bearing on medical issues, has any bearing on public health issues. I really don't believe we overstated that issue at all. I don't really think we did. And if I did say it, I was very specific about when I said it about the particular issue.

THE COURT: Well, I'm inclined to at least think in terms of the jury instructions, perhaps a certain paragraph.

Making sure the jury understands that either side can bring in any witness that side chooses to. I'm not sure the jury would be aware of that. What's your thought on something in the general sense along those lines?

MR. PAPANTONIO: That's fine with me, Your Honor. I think that tells the whole -- that tells the whole strategy. It tells the whole story that this Court has had to endure hearing after hearing where we've had to walk around the edges of what DuPont has tried to do by trying the case with expert absentia all the way down to Dr. Cohen. The Court went out -- the Court went out of their way to say, yes, we're going to allow these things of Dr. Cohen to give an opinion, and I think that was an appropriate ruling. That is what we should have done.

But to allow them to simply try this case by saying they paid huge money to experts and they haven't called them into Court. Because truthfully, Judge, I sincerely mean this, there are experts that they had to come to court that could not testify about key issues. I didn't just say that in opening statement. There are people they had that could not testify to key issues because they knew it completely would be inappropriate and almost borderline fraud.

THE COURT: Mr. Mace.

MR. MACE: Your Honor, it would only exacerbate the prejudice for you to give such an instruction on the experts.

It is highlighting the improper argument that was made by the plaintiff. We all know that Dr. Weed didn't have the assignment to look at causation. That was not his role.

More importantly, I really must note for the record the whipsaw of being prejudiced by the different attitude on the plaintiff's case versus the defense case. We raised, during the plaintiff's case, that they weren't calling Dr. Margulis who we had videotape after videotape making gut-wrenching admissions that gut their case. And I got the Court's clarity that you weren't going to let us use somebody they weren't going to call as a witness to cross the person they did bring as a witness.

So that was the understanding for the case. And then to allow them in our case in chief to talk about Weed, when that wasn't even his role in the case, we think is highly improper, unfairly prejudicial and to add to that by putting an instruction in they can call whomever they want, we think is highly unfair.

THE COURT: If you're opposed to the instruction, that's fine. I'm not inclined, after close is over, to reopen it with instructions. The rules require a timely objection if something's improper. It didn't happen. At this point we're going to leave it.

MR. PAPANTONIO: Just to be clear, we're fine with the instructions. If defense is really so worried about anything

that's been done out of -- that shouldn't --

THE COURT: I will note for the record, I probably would have sustained an objection. We just got into this slightly but I will remind the jury, this is a case between one plaintiff and one defendant. It may have ramifications beyond that, but that is not for the jury to consider to the evidence in this case. When we get to rebuttal, that's something I would take a close view on if it comes up again. So just a fair warning.

With that, we'll be in recess.

(A recess was taken at 11:41 a.m.)

TUESDAY AFTERNOON SESSION

OCTOBER 6, 2015

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THE COURT: So, ladies and gentlemen, we'll begin this afternoon with DuPont's closing argument.

Mr. Mace, you may proceed.

MR. MACE: Thank you, Your Honor.

Ladies and gentlemen, it's good to be able to talk with you again. This case, as you've seen over the past three weeks, is about facts versus sound bites taken out of context. It's about proof versus speculation.

Three weeks ago I stood before you and I told you I'd prove three things for you. One, that no employee of DuPont thought that their actions were likely to cause any harm to Mrs. Bartlett or anybody in the community. Two, that DuPont has no liability here. It did not breach any legal duty to Mrs. Bartlett. And three, that Mrs. Bartlett's kidney cancer is readily explained by other things and was not caused by any conduct of any DuPont employee.

I also told you that Mrs. Bartlett's lawyers were not telling you the whole story, and that much of what they talked about did not directly relate to the specific issues that you need to decide in this case.

So let's see if I kept my word to you.

First, no employee of DuPont thought that their actions

were likely to cause harm to Mrs. Bartlett or anybody in the community. And you saw that the plaintiff's case is actually a house of cards.

Let's start with the undisputed facts. One of the last things I said to you that we talked about in opening statement, we talked about common sense, because you didn't leave your common sense out on the street when you came into the courthouse today. And what you heard and what you saw, because actions speak louder than words, you heard people like Dr. Playtis who were involved in taking the community water samples and analyzing the results, what they meant. They were drinking the very same water themselves along with their spouses, their children, their friends, knowing that it had small amounts of C-8 in it. They were testing their own tap water from their own houses. They were analyzing the water they use themselves every day to drink, to brush their teeth, to take showers in, to cook with, water they put in their family's pet's water bowl, to water their grass.

You heard the supervisors, top management, including the plant manager, was drinking the water from the plant drinking fountain knowing it had C-8 in it. You heard that one of DuPont's best and brightest, Dr. Rickard over here, when he came to the plant, he would drink out of the plant drinking fountain knowing that it had C-8 in it.

Did they really want you to believe that DuPont's

employees thought that the trace amounts of C-8 that had gotten into the water were likely to cause harm but they just continued to drink it anyway, continued to let their family and friends drink it knowing it would cause harm? Does that make any sense?

And what about the contemporaneous documents, the documents written through the decades that we've talked about before there were any lawsuits? The internal, confidential documents, the documents that show what people were really thinking back at the time. What did those show? I'm not going to go through the dozens we went through during the trial. I'll remind you of a few of them.

You saw documents like Plaintiff's Exhibit 363, one of these personal and confidential documents, internal company files nobody would ever think it would see the light of day back in '82. All -- not some, not some, all. All of our presently available data indicate there is no chronic health effect due to the low levels of exposure to the employees, to the employees.

And we're going to talk about the relative levels of exposure, what was known when, what was the information available to DuPont through these decades that we talked about.

You saw documents like Defendant's Exhibit 676, up to 2000: Dr. Playtis, internal company memo, not written for purposes of any lawsuit. He gets an inquiry from the plant

over in Japan. We've got some blood levels. Anything to be concerned about?

Dr. Playtis, recognized as having expertise in this area -- this is an industrial hygiene issue. What does he say back not in the court of law, back at the time to his colleagues who needed to know the truth?

Blood levels higher than 50,000 -- 5-0, comma, 0-0-0 -- 50,000 parts per billion have been recorded in humans with no, no observed health effects. That's what the contemporaneous documents show. Even Dr. Siegel, the plaintiff's expert, admitted this is what the documents show.

Siegel 1, please. Cross-examination:

> Sir, when you were reviewing the internal DuPont documents, you noticed there were a number of internal documents where DuPont stated it does not believe C-8 is causing any disease.
>
> Quite a few documents said that.

Their own expert acknowledged that. That's what he saw in DuPont's documents. You saw it. We threw the gauntlet down to Mrs. Bartlett's lawyers. Out of the 8 million pages of records involved in this case, show me one document, just one, show me one document where anybody at DuPont said they expected that harm was likely to anyone in the community.

And despite the many, many years of litigation you've heard about, more lawyers than I can count working against

DuPont every day, digging through every nook and cranny, every file cabinet, every desk drawer, every computer of anybody who had anything to do with C-8, and they've not shown you a single document, not one, where anybody at DuPont said they expected that harm was likely to anybody in the community.

Was that reasonable? Was it reasonable for DuPont's employees not to expect any harm?

You heard Dr. Rickard. These are undisputed facts. They never challenged them. This is not the type of compound you would expect to cause harm. It's a surfactant, like a soap, DuPont was buying from 3M. C-8 was a fine, white powder, kind of like Tide laundry detergent, a soap-type material. It was initially packaged by 3M as this powder. Later they dissolved it and diluted it into a liquid in the late '80s. You heard it's stable, it's non-reactive, it has a structure very similar to natural fatty acids we're all born with. When it gets into the blood, you heard it gets bound up with the blood albumin, a protein in the blood, where nearly all of it, 99 percent of it, is bound up and not - the term used - biologically available, not able to be reactive with other things because it's bound up. That's what DuPont knew at the relevant time, undisputed facts.

You also saw that C-8 is not a regulated company. Throughout that relevant time period we talked about, there was never any restrictions, no laws restricting the purchase, use,

or disposal of C-8. Plaintiff's own expert admitted that. C-8 could be lawfully washed down the drain like the detergents, dish-washing liquid, other soaps and things we all use at our house every day like thousands of other chemicals. You saw, as you probably already knew, that both the state governments both in Ohio and West Virginia, and the federal government, the United States government, they have many, many agencies that are charged with protecting the public health. You heard that these agencies take their job seriously. They set exposure limits to protect the public health.

And you saw that both the United States government and Ohio set specific limits for what's called the MCL, Maximum Contaminate Level. The agency set limits for the chemicals and substances that they determine are potentially dangerous enough that they need to set a limit to protect the public drinking water.

You saw, for example, Defendant's Exhibit 2351. U.S. EPA sets the national primary drinking water regulations. And you heard how the MCL lists many, many other things, other chemicals, but not C-8. And you also saw that C-8, the chemical we're here to talk about, has never, never been on the MCL list, and it still isn't today as we sit here. There's no draft, no proposal, to even put it on the MCL list. Don't be misled about that.

What else did DuPont know back at the relevant time?

DuPont knew that the people working at 3M, the people who are making the C-8, had much higher exposures to C-8 than the people working at DuPont. 3M was making the C-8. 3M was selling it to a lot of other companies, not just to DuPont. You heard that C-8 was made by eight other major manufacturers in addition to 3M, and numerous other smaller manufacturers. You heard that there were many, many, many other companies around the world and in the United States using C-8.

You heard that C-8 is in the blood of many people around the world and it came from many different sources, many other companies. Don't be misled into thinking it's in the blood of people around the world because of DuPont. DuPont was one of many, many, many companies that was using this chemical you heard from the 1940s through today. DuPont hasn't used it since 2013. Many companies still use it today.

You heard how little of it DuPont was using. It came in 50-pound drums, not these super sacks of thousands of pounds. More importantly, you also saw that 3M, the manufacturer, the person that was selling it to DuPont, repeatedly told DuPont in the '70s, in the '80s, in the '90s, in the 2000s, that 3M was not seeing any disease in the 3M workers, even the ones who had the highest and longest exposures to C-8.

Remember what you heard. 3M had been making this and using it itself since the 1940s, above our chart. Back in the 1940s is when 3M started making it and using it. By the time

we get to the late '70s, 3M had been making it and using it for more than 30 years already by the late '70s. 3M was telling DuPont that 3M's employees, the people with the highest exposures, with 70,000 parts per billion in their blood, were not having any diseases or any health problems caused by C-8.

Again, we won't look at all the documents. Let's look at a few. Defendant's Exhibit 338. 1979, one of these confidential, internal documents not written for any lawsuit. The 3M medical director said no adverse liver effects. And remember, they want to talk about the studies on the animals back in the '60s. What was the target organ? The liver. Did it make sense that was where they were looking primarily in the workers? Sure.

No adverse liver effects or other health effects, because they didn't stop there. They reviewed the employees' medical records at 3M, at DuPont. No health effects. No liver effects or other health effects found among employees in FC-143 C-8 operations.

On page two of that, please. One of the issues that you need to have in your mind is background levels of exposure. There was some discussion about that here and there. Let's focus on that for a minute, because in terms of what DuPont knew back at the time, 3M went and got samples in a Chinese village totally away from industrialized society. And what did they find? 4 parts per billion to 17 parts per billion. So

I'm converting that. It says 004 to 017 parts per million. You have to move three for parts per billion. Most of what we've been talking about is parts per billion. I'm going to keep apples-to-apples comparisons.

3M is telling DuPont, other side of the world away from any industrialized society, people have 4 parts per billion to 17 parts per billion in their blood. And what about in the good old US of A? 3M found 2 parts per billion to 130 parts per billion, background, in the general U.S. population. You've heard the plaintiffs claiming 19.5 in 2005. We'll get back to that.

You saw documents like Exhibit 349. 1982, another confidential, internal document. Pearlson - that's one of the doctors from 3M - reported on 600 employees at two different plants. You heard a little bit about Cottage Grove. That was the main plant where they made it. They had two other plants that made and used C-8. An examination of liver enzyme levels confirmed earlier studies, no adverse health effects related to organofluorine in the blood. Repeated message decade after decade.

Exhibit 20. We have the numbers up here. If it's something you want to look for in the pile of exhibits, they'll have tab numbers. You can find these.

Exhibit 20. 3M, the biologic limit value, 5 parts per million, year 2000. Let's get back apples to apples. Five

thousand parts per billion in the blood. What do they say about that? Is that a problem? Is that something DuPont should be concerned about? If present, even on a chronic -- chronic means long term -- chronic basis would not be expected to pose or correlate with a significant risk of adverse health effects for a working lifetime, 40 years. That's what 3M was telling DuPont through the decades.

Now, some of you might ask, well, Mr. Mace, if DuPont didn't believe that C-8 was likely to cause harm, why did it take all of these precautions that we've heard about? They were monitoring the employees' blood levels. They monitored the air levels. They reduced the exposures. They put scrubbers on the air emissions, they put filters on the water emissions. Why did they do all those things?

You saw that the precautions were taken to be proactive because 3M had told DuPont that 3M noticed that C-8 was persistent in the blood of the people working at 3M, even though they were not seeing any disease resulting from the exposure. As you've seen, and I told you in opening statement, the simple fact: persistence does not equal harm. That was unchallenged. And in fact, Mrs. Bartlett's experts admitted that. Persistence does not equal harm. There is a very big difference, like we talked about in opening statement, between something just being there and something causing disease.

In fact, you're going to recall that both of the

plaintiff's high-priced experts agree, just because something is there it does not mean it's causing any harm. In fact, there's many things that remain in the body for various periods of time without causing any harm, things like medical implants, artificial joints, man-made things, not natural, not things we're born with, put in the body for many years or decades and they don't cause any harm.

Ladies and gentlemen, I'm sure you noticed it. The very documents that the plaintiff's lawyers wanted to show you the most and showed you repeatedly and repeatedly and repeatedly actually proved DuPont's point. They rely very heavily on these Bernie Reilly and John Bowman e-mails. In fairness, do I love all the language in those e-mails? No. Do I wish they would have used a little bit different phraseology sometimes? Sure.

Ladies and gentlemen, you can search each and every one of those e-mails with a microscope and you will not find a single statement in any of them that they expected any harm to anyone. In fact - I'm sure you noticed it - they said the opposite. In the very sentences they tried to point out to you, and they didn't highlight or put their little lines under or put their red circle around, the very rest of that sentence, the sentence above, sentence below, said they didn't expect any harm.

Let's look at a few of them, some they just showed you

today.

Plaintiff's Exhibit 181, Mr. Reilly's e-mail from 2000. We knew the material they sold us, a surfactant, also is very persistent and gets into the blood. But what? So far no signs that it's hurt anyone.

You've seen the good, the bad, the ugly. You have seen every piece of dirty laundry that DuPont has. They think this is the dirtiest laundry. What does it say? No signs it has hurt anyone.

Mr. Reilly again, Plaintiff's Exhibit 563. What does he actually say in 2001? I do not believe we are hurting anyone. The good news is it's been used for three decades and doesn't seem to have impacted anyone's health.

It does not say we think it's likely to cause harm. It says the opposite, the very documents they want you to focus on.

Mr. Bowman, Plaintiff's Exhibit 176. Year 2000, John Bowman: The public attitude is that anything biopersistent is harmful, concern about biopersistence. Not one word, not one phrase, not one sentence: Boy, we're in trouble. This is going to hurt somebody.

That is not what these say. You are left with implications. Read the actual words. Read the actual facts.

They showed you this one again today, Plaintiff's 366, from 1984. Again, personal and confidential. And they love

this paragraph: Consensus reached, issue will decide future action, corporate image, corporate liability.

Once or twice they got around to mentioning two paragraphs above it. The consensus was C-8, based on all, all the available information both from the company and 3M does not, N-O-T, not pose a health hazard at low level chronic exposure.

Are they using a sound bite out of context without ignoring what the actual message was? Yes.

This is the end of May of '84. On cross we had to show you Defendant's Exhibit 1970.2. So 1970, this is within a few weeks of that in '84. On the back of the page, what were they saying internally at DuPont at the same exact time? No known adverse health effects at current levels. And that's current levels in the workforce. Orders of magnitude, ten, a hundred times higher, a thousand times higher than anything getting out to the community. No adverse health effects.

Potential liability? Sure. There's always a potential. From what? From unjustified claims. You can pay your hundred bucks and file a lawsuit against anybody you want to and the defendant has to come in and defend against it. Yes, it costs money and, yes, it's not a good thing. But it doesn't mean it's valid. It doesn't mean that's valid. Do corporations have a fear of lawsuits? Sure. They have a fear of unjustified lawsuits. That's what they were concerned about,

low probabilty of liability losses, direct opposite of what they wanted you to believe.

Thirty years of experience. By then DuPont had been using it for 30 years with no signs of adverse health effects. What's their response? Even though that's the thinking - it's not hurting anybody, we've been using it for 30 years, there's no issues here - did they say, okay, we're done? No. Continue to monitor the blood, air and water. Continue to reduce, eliminate. Is that the sign of a reasonable company trying to be proactive doing good things? You can evaluate that.

Let's move to the second thing I told you I would prove to you. DuPont has no liability here and did not breach any legal duty owed to Mrs. Bartlett.

Later today, Judge Sargus is going to give you the jury instructions on the law that you're to apply to the facts of this case. He tells you the law. You determine the facts. You put the two together and answer some questions.

Let's focus for just a few minutes on what the law is on a few of the most critical points for which you need to decide because you're going to see that the actual law on negligence, this term negligence, and the other claims that are being made by Mrs. Bartlett requires proof of facts that Mrs. Bartlett is unable to prove and has not proved to you.

So let's start with negligence. You're going to see Instruction 20. To prove negligence, she has to prove that

DuPont would have foreseen that injury was likely to result to someone in Mrs. Bartlett's position from DuPont's conduct. Injury was likely. That the likely result of an act or failure to act would cause injuries. Focus on those words that are underlined, please. Likely, not just possible; would cause injury, not just a risk.

This is a very different standard than what the plaintiff's experts came in here to talk to you about. There's different standards in a court of law for a claim of personal injuries than there is in the public health field. Different standards.

The judge is going to tell you the standard you're to apply in this case. And you may be a little surprised by that, because the plaintiff's witnesses only wanted to talk about risk, what might be, what could be, what's possible, speculation. But a court of law requires much more than that. You're going to hear that.

What we're here to talk about, community level of exposure. It requires proof that a DuPont employee knew, or should have known, that their conduct was likely to cause harm to Mrs. Bartlett or someone like her in the community. Community levels of exposure.

As you evaluate DuPont's knowledge, DuPont's conduct and the reasonableness of it in the '70s, '80s, '90s, 2000s, it's important to keep in mind, as you already know from your own

everyday life, that the level of exposure, or the dose, is absolutely critical when you're deciding what actions to take. Even Mrs. Bartlett's experts agreed with this, that if the exposure is low enough, you don't expect any harm. And remember, the exposures that Mrs. Bartlett is claiming she had was to less than one half of 1 part per billion.

Now, you heard how small a part per billion is. I mean, we held up a penny in opening statement. You heard that a part per billion, if I had a billion pennies, I'd have ten million dollars. One penny compared to ten million dollars, 1 part per billion. One second in 31 years. That's how small a part per billion is.

And you saw in plaintiff's opening slide 7, please, the Bartlett exposure chart. Now, they continued this chart up to '81. You'll recall Mrs. Bartlett said, well, I was around when I was 25. It might have been a few years later that I moved out of the house. But, in terms of the levels of exposure that Mrs. Bartlett is claiming in the relevant years -- and we're going to get in a minute to growth rate of tumors and when hers likely started. You heard Mr. Douglas refer to it, at least 11 years earlier, so 11 years before.

And you also -- we'll get to that in a minute. But think about in the relevant years. In these relevant years back here, she's claiming less than .3 parts per billion of C-8 in her water; actually, less than .2. It's the equivalent, if

you want to think of it that way, as one penny out of $30 million. It's the equivalent of one second out of 105 years. A hundred and five years ago was 1910. The Model T had just come out, Taft was the president. It was before the Titanic sank.

In terms of what DuPont knew and when, you saw that DuPont looked for C-8 in the Tuppers Plains water and it didn't find any in the 1980s. Now, certainly, DuPont did not expect any harm was likely when no C-8 was even found, when it went to look for it. You heard that the first time that C-8 was ever detected in the Tuppers Plains water was not until 2002, an undisputed fact. They could have contested that if they had anything to contest it with. Uncontested. DuPont did not know there was any C-8 in the Tuppers Plains water until 2002, long after Mrs. Bartlett's kidney cancer had already been successfully removed in 1997. Again, before June of 1997. That's the time period we're looking at.

And think about the rest of the evidence you heard. Let's go back and think hypothetically. Hypothetically, even if DuPont had known back in the 1980s that Mrs. Bartlett was drinking water with less than 0.3 parts per billion of C-8 in it, would DuPont have expected any harm to result? Would they?

You saw a graphic we used in opening. Dr. Rickard talked about it. There were all kinds of animal studies done. As part of the animal studies, you try to determine what the

no-effect level is. What is the level that the animal is being subjected to that we don't see any effects? This is measuring the blood, and all these -- no-effect levels for the animal studies.

And then we talked a little bit about the 3M employees who had exposures going up to 70,000 parts per billion. But the average was about 5,000 parts per billion in the blood of the 3M workers. No effects. DuPont, one-tenth of what the 3M workers were seeing on average, so about 500 parts per billion. That's what DuPont knew. That's what the knowledge was back then. Why would DuPont expect harm at the extremely low community levels of exposure when no harm was being seen at much higher levels of exposure?

You also saw something very important. You saw what third parties were saying at the relevant time period. You saw that ACGIH, the American Conference of Government and Industrial Hygienists -- third party, this isn't DuPont talking -- they had the equivalent of 500 parts per billion is okay for a working lifetime, 40 years. You heard what 3M came up with. 3M said the equivalent of 500 parts per billion is okay for a working lifetime, 40 years.

And then you saw the CATT report, Defendant's Exhibit 613, that as late as 2002 -- go to page 33, please. For a lifetime exposure to drinking water with 150 parts per billion, no risk, lifetime exposure equal to or less than --

and the 150 is on the next page -- no risk of deleterious effects, bad effects, is expected. No risk. No risk. Not only we don't expect it to be likely, no risk. So, even if you want to get back into the fuzzy-wuzzies of risk that they wanted to talk about, no risk. Lifetime exposure, drinking water, 150 parts per billion, 2002. And this was more than a year after Mr. Bilott wrote his letter in early 2001, sent it to all the agencies trying to stir them up over C-8.

Go back to page 10, please. You heard this team of toxicologists from EPA, ATSDR, West Virginia and others. They looked at all the knowledge available at the time, all the data DuPont had looked at, and they said a safe lifetime exposure value of 150 parts per billion. This confirmed what DuPont had been saying, that DuPont had been ultraconservative in setting its own internal guidance levels, values that were set very, very low with all kinds of safety factors put into them trying to ensure that people would be safe.

Then you saw what happened at trial. Mrs. Bartlett's lawyers know that the CATT report completely destroys their case, so they tried to throw rocks at the CATT Team. You heard Dr. Dourson. He was a leader in U.S. EPA for more than 15 years. His job, when he was at EPA, he was charged with evaluating the toxic effects of chemicals and setting appropriate screening levels for the U.S. government; did that for more than a decade. You will recall when he came to the

courtroom, he had just gotten back from Geneva, the World Health Organization.

He came to court. He told you the facts. There was no conflict of interest. We saw on page ten, highly, highly qualified toxicologist, highly trained scientists, including three from the U.S. EPA and one from ATSDR, Agency for Toxic Substance and Disease Registry, federal government agency.

And you saw Defendant's Exhibit 1812.3. All of them signed a certification that they agreed with the 150 parts per billion number and that the report accurately reflected their deliberations. If you're interested you can look at 1812. You will see signed certifications by each and every member, including the U.S. EPA folks and including the ATSDR, all ten of these scientists.

And you heard Dr. Dourson, no arm-twisting, no lobbying for a higher number by DuPont. You heard the CATT Team thoroughly investigated the state of the knowledge at the time, which is what you need to figure out, what you need to make your decision based on.

What was the state of knowledge at that time over the years? They looked at that and they followed U.S. EPA guidance in determining that lifetime exposure to 150 parts per billion in the drinking water, lifetime, not expected to cause any harm, no risk even.

And then what else did you see? Mrs. Bartlett's lawyers

tried to ignore it hoping it would go away. But then you saw Defendant's Exhibit 614. You saw this internal memo where Ohio EPA rejected -- they actually sat back and evaluated. Remember, this is written by Ohio EPA, interoffice communication, 2002, to the director of the Ohio EPA, head honcho. They assigned a toxicologist to review the technical report, this CATT report, CATT Team report, at page two.

They talk about these screening levels that had been developed and 150 parts per billion. Micrograms per liter is the same as parts per billion. They talk about the fact that -- we talked about that the CATT Team determined what's a safe level. There was something called the GIS Team, Groundwater Investigation Steering Team, that was looking everywhere they could look to see where is C-8 and how much of it is there. They reviewed both of those things and said, when we compare them, the samples, all the samples, not one or two, all the samples of drinking water were below the screening level. As a result, no adverse health effects would be expected to occur in populations using the contaminated water.

Ladies and gentlemen, see how this language is going to track with how His Honor is going to tell you the law is. Do you expect harm will occur? The opposite. No. No adverse health effects would be expected.

Top of the next page, the conclusion on their review. The screening levels developed by the CATT are reasonable,

scientifically defensible and health protective. The process followed U.S. EPA guidance.

You also heard about the fact that Mr. Bilott was writing letters trying to get the CATT Team to change what it was thinking about. And the Ohio EPA addressed that: Evaluations of specific concerns from the plaintiff's letter. And time after time: The issue's without merit, the issue's without merit. Go to the next page. This issue is without merit. This issue is without merit. This issue is without merit time and again for the points Mr. Bilott was trying to raise.

And the conclusion. Can we blow that up?

Conclusion of Ohio, independent investigation, DuPont's nowhere to be seen, nobody with a conflict of interest. CATT Team's analysis is fundamentally inconsistent with the facts and guidance. So they're evaluating the claim that was being made by the attorney. That's not valid. The CATT properly understood its work, performed the analysis in a scientifically defensible manner according to the state of the art, state of the art, risk assessment practiced by U.S. EPA. Ohio put its blessing on the CATT Team number.

Like an ostrich with its head in the sand, they tried to ignore this document. Why? Because this was a completely independent evaluation for the head of the Ohio EPA without any involvement by DuPont at all.

Now, in terms of evaluating the conduct of DuPont. You saw that either before the CATT Team did its work, DuPont did something that shows, dramatically shows, that it cared about the community and did not expect any harm to the community. You heard about the fact that in the 1980s when DuPont first learned that traces of C-8 were getting into some of the drinking water, DuPont didn't ignore it. DuPont did evaluations to arrive at an internal guidance level that they called the CEG, Community Exposure Guideline. And again, you heard undisputed, DuPont was proactive on this. It did it before anybody else.

In fact, comparing DuPont to the other companies, you saw that very few other companies ever set community exposure guidelines. Most companies just sit back and wait for the government to get around to it. That wasn't what DuPont did. DuPont started with this very conservative AEL, Acceptable Exposure Limit, that they had, which was the equivalent of 50, 5-0, parts per billion in the water. Already a level with a safety factor of at least one hundred times below where any effect level had been seen in any of the animal studies, a level so conservative that no harm was expected even if the 50 parts per billion was reached.

And you will remember that Dr. Siegel admitted that the AEL was set following a reasonable standard of care to protect the public health. Siegel 6.

- - -

Thereupon, video was played in open court as follows:

A Yes, once again, I do agree that they're setting the AEL at the level they set it was following a reasonable duty of care to protect the public's health.

- - -

MR. MACE: DuPont started with that, the standard that was already blessed at trial by Dr. Siegel, and then they added on additional factors of safety. Why? To try to make sure they were protecting even the most sensitive people and even if they were exposed 24 hours a day, 7 days a week. They set this precaution level so, if exposures reached this ultra low level, DuPont could then proactively consider whether any additional actions were needed or not.

We talked about this kind of analogizes to the back-up buzzer on your car. You start backing up, the buzzer goes on. You haven't hit anything yet, no damage caused, but it gives you a chance to be proactive. Should I be doing something different? Should I turn a different way? Should I go slower? Should I slow down? DuPont set this back-up buzzer at a very low level so it could consider -- not because it expected any harm to occur at that point. This is a back-up buzzer with about a mile, a football field, before you hit the wall. They have it going off so we can think: Do we have to do something different? Because we're proactive. We're trying to be

reasonable. And that precaution level was set at 3 parts per billion, if all your exposure came from drinking water.

Again, you've seen Mrs. Bartlett only claims exposure far, far below 3 parts per billion, far, far below any level where DuPont thought any harm would occur.

So even if -- get back to our hypothetical question. Even if DuPont would have known about the levels that she now claims she was being exposed to prior to 1997, it was a level far below any level where DuPont thought any harm could occur, and for good reason based on the knowledge at the time and what third parties were saying.

You saw the screening levels back at the time. DuPont set its AEL at the equivalent of 50 parts per billion. 3M comes in about five years later and says, we think 500 is okay. ACGIH, we think 500 is okay. DuPont doesn't change it. It stays conservative. DuPont sets its CEG even lower. We want to make sure we're absolutely protecting the community, 3 parts per billion. Many, many, safety factors.

3M comes out its with lifetime drinking water standard, 70 parts per billion. The CATT Team, 150.

Looking back at what the state of the knowledge was at the relevant time, you see a few things, that DuPont was always the most conservative, the most protective of health. And you also see that Mrs. Bartlett does not claim any exposure even reaching one-tenth of the back-up buzzer of 3 parts per

billion.

In short, ladies and gentlemen, directly contrary to the story you've been told by the plaintiff's lawyers, you saw that DuPont was interested in making sure that no harm would come to the community. Instead of any employee of DuPont taking an action that they knew was likely to cause harm, you've seen the exact opposite. You've seen that repeatedly through the decades, DuPont has acted first to protect people while it checked out the facts. First to protect people while it checked out the facts.

Let me touch on some of the time line events. You heard in 1978 3M told DuPont that 3M was seeing elevated organic fluorine in the blood of people working at 3M -- we mentioned this a few minutes ago -- even though 3M wasn't seeing any disease or harm for it. How did DuPont react? Did they say, okay, thanks? No. DuPont reacted how you would expect a reasonable company to react. They promptly told its employees, the people working with C-8. They started monitoring the employee blood levels. They reviewed all their medical records. They started reducing exposures, even though there was no evidence of harm, just because C-8 was persistent.

You saw documents like 726, page 2. June of '78. No known ill effects which could be attributed to these chemicals, or C-8, have been defected among employees in more than 20 years of experience. So you heard in the 1950s -- early 1950s

is when DuPont started using C-8. By the late '70s they had been using it for more than 20 years. What had their experience been? No known ill effects in more than 20 years of experience with the products.

Mrs. Bartlett's own expert admits this was good conduct by DuPont. And what did DuPont find when it went back and looked at those employees' medical records? They found a couple of things: one, that the relatively few people who were working directly with 100 percent C-8, the people who were measuring it out to use it as a processing aid in some of the processes, those were the people that had the highest levels of C-8 in the blood, as you would expect. They also found that those people were not, not showing any disease or harmful effects.

You've seen a lot of documents. Let's look at a couple. Exhibit 79. Reviews of procedures, medical records, toxicologic information, no health problems.

You saw documents like Exhibit 704. Another one of these personal and confidential internal company records buried in the file cabinets at DuPont, what people were really thinking, really saying, back at the time probably before some of us were born. Showed up 70 parts per million of organic fluorine. That's 70,000 parts per million in the 3M employees. General background level less than 1 part per million, so less than a thousand is general background.

What does it say? No adverse health effects have been detected in any of the exposed people. That's what DuPont knew back at the time. And despite the fact that no harmful effects were seen, DuPont still took reasonable precautions just because C-8 remained in the body for a while. DuPont took steps to reduce exposures, continued to monitor its employees, continued to monitor their work areas.

And you saw that DuPont did something else, something different than any other company that was using C-8, including 3M. Promptly after 3M informed DuPont that C-8 was persistent in the blood, DuPont developed this AEL that we talked about, the Acceptable Exposure Limit, to try to ensure that no harm would be expected. DuPont was the first. Nobody else did that. Even 3M who was making it didn't do that. DuPont wanted to protect even the most highly exposed, the people directly handling pure C-8, 40-year working lifetime.

And you heard Dr. Rickard talk about this. Exhibit 1102 at dot 16. Anything that we're around, any substance, can cause harm if you're exposed to enough of it. Water, normal daily dose, lethal dose, about a ten times safety factor. Sugar about 40 times, salt, caffeine, aspirin. DuPont did not just set its AEL in the 40s, the 10s, the 20s. It had more than a hundred, more than a thousand-fold safety factor before any harm would be expected. It was conservative. In an effort to make sure it was protecting people, DuPont set its guidance

level more than a hundred times below where any adverse health effects had been seen in any of the animal studies.

And you heard about this rigorous evaluation, very thorough evaluation that was made by DuPont, made initially and then re-evaluated as each new piece of information came in. Are we still being protective? The team that evaluated this, you heard, included highly trained Ph.D., toxicologist, epidemiologist, industrial hygiene and other scientists who evaluated all the information available. People like Dr. Rickard here.

Ladies and gentlemen, it has been an absolute honor for me to get to know Dr. Rickard and the other folks at DuPont who have been involved with these issues. You saw DuPont's witnesses on the stand last week. The caliber, the quality of these people, was amazing. And to sit here for weeks and see these fine people castigated, yelled at, second-guessed by Monday morning quarterbacks with 20/20 hindsight has been appalling.

Let me get back to the time line.

We get back to 1981. That was when 3M tells DuPont that a preliminary finding from a rat study was that C-8 may have caused an eye lens defect in some rat pups.

So what did DuPont do? Within ten days, DuPont transferred all the woman of child-bearing years out of the Teflon areas while it checked out the information. Once again,

DuPont acted first to protect people while it checked out the facts.

And what else did they do? Did they sweep it under the rug? Absolutely not. There wasn't a rug or even a broom to be found. It was just the opposite. You saw the letters.

Exhibit 1414. Within a few weeks of getting that notice, DuPont's writing to EPA Region 3 West Virginia Water Resources, here's this information we got from 3M. They say this might cause some problems with rat pups, just wanted you to know. We don't know if it's relevant to humans, just wanted you to be aware of it. By the way, this is present in our outfall five. We're putting this into the Ohio River, wanted you to know.

Their air emissions, same date. West Virginia Air Pollution Control Commission, 1981: Wanted you to know we got this information from 3M. We're not sweeping it under the carpet. Here it is. This is what 3M is saying. We don't know if it's relevant or not. We got to check that out. But in the meantime, we're venting this material, one-and-a-quarter pounds per hour, out of the smoke stacks.

We told them.

We told them.

You heard how this was in the *Wall Street Journal* heavily covered by the media. And after acting first to protect people, what did DuPont do to check out the facts? You

heard that they coordinated with 3M who was selling the C-8 to DuPont and who did the initial study on this.

You heard that 3M started two new animal studies. And DuPont, even though they're only the user, they started two new animal studies to check out the facts. All four come back negative, negative. They go back and look at the original slides. They bring in outside experts, National Institute of Blindness, National Institutes of Health. They find out that they were using a dull scalpel, to put it in layman's terms. They had dragged the scalpel across the eye lens and it ripped the tissue instead of cutting it. Outside experts agreeing with that. Outside experts agreeing that this was a false alarm.

And you heard His Honor's instruction to you, that the science panel has determined there is not a probable link between exposure to C-8 and birth defects. Why we got off on this side issue remains to be seen, but it's undisputed that C-8 does not cause birth defects.

But did DuPont say, well, we're not sure, let's wait, let's wait until we all figure it out? No. Acted first to protect people. Let's move the women off the line, get them protected while we check it out. That was the conduct of the company.

Moving on with the time line, 1984, the mid-'80s. You saw in the mid-'80s DuPont looked at community water, they

found such low levels of exposure, they did not expect any harm. Let's look at the jury instruction. Remember that. They have to expect that harm is likely to occur. Is that what they found? No. Water results in '84 -- personal and confidential, buried in the vault, nobody is ever going to see this memo, we can say whatever we want. Update on C-8 in water samples. The concentrations are very low and in my judgment are not cause for concern. Not cause for concern. Not likely to cause harm.

And you heard Dr. Playtis. He wouldn't have continued using the water himself, letting his family and friends use it if he thought it was causing harm.

You heard again today about 1999 and the Tennant cattle claims. What was DuPont's response? DuPont cooperated with the EPA, a panel of three EPA-selected veterinarians. Three veterinarians selected by DuPont made a thorough investigation. They unanimously concluded that the issues with the Tennant cattle were problems with how Mr. Tennant was taking care of the cattle, not caused by substances from the landfill.

You saw Exhibit 927, the Cattle Team report. Six different veterinarians. The EPA-DuPont Cattle Team. You saw the conclusions at page four. This is Exhibit 927. Conclusive evidence, deficiencies in herd management, there was no evidence of toxicity associated with chemical contamination of the environment.

And again, while we took this frolic and detour, the judge instructed you at least twice with regard to cattle disease, a team of veterinarians, including three selected by EPA, three selected by DuPont, investigated the farmer's claims and determined the cattle's illness was not the result of any environment contamination. Neither party is claiming in this case that C-8 actually caused or causes disease or death in cattle.

You're required to follow the Court's instruction.

Now, let's get to 2006. Some of you may not be able to see it. We're in the mid-2000s, so 2006 where we're at on the time line of knowledge. And you heard that in 2006, DuPont paid for water filtration to remove the C-8 from the water in Tuppers Plains and from other water districts. You had heard that DuPont had already been providing some bottled water since 2002. But ladies and gentlemen, it's very important that you focus on the time period -- 2006, water being filtered -- and that you focus on what the knowledge was at the time.

What was the state of the knowledge at the time?

You saw Exhibit 1190. Jennifer Seed, one of the people that was there at the CATT Team, Ph.D. toxicologist, head of the risk assessment division for a branch of the U.S. government in EPA. Studies have not shown any effects directly associated with C-8 exposure, not shown any effects, C-8 exposure. That was 2005.

2006, EPA -- and this is from the administrator, the administrator, the head honcho, U.S. EPA, writes to the head of DuPont. Mr. Holliday, January of '06, refers to DuPont as a proactive company working collaboratively with the EPA. Not exactly what you heard over here.

For the point we're on now, at page 2, EPA is not aware of any studies specifically relating current levels of C-8 exposure to human health effects. DuPont's paying for filtration in 2006 even though EPA is saying, We don't see it being linked to health effects. This is Steven Johnson, the head of U.S. EPA.

You saw the Emmett study, Exhibit 2136, 2006. Dr. Emmett -- this is a study, 2006 community exposure to C-8, relationship between serum levels and certain health parameters. Who funded this? Is this some conflict of interest, something that they want you to give the back of the hand to, can't trust this one? This is funded by the Environmental Justice Program, the National Institute of Environmental Health, not a penny from DuPont, not a penny from 3M, not a penny from the other eight manufacturers of C-8, not a penny from the hundreds of companies using this chemical. That's who funded it.

Who did they look at? People that had a median, which is kind of like the average, C-8 exposure of 354 parts per billion, not 19. 354. And this is in 2006.

What did they conclude? No significant positive relationships, no toxicity from PFOA was demonstrated. None. Zero. Independent, third party, could do whenever he wanted to do, not being influenced by DuPont, 2006.

You heard as late as 2009, in the late '00s, scientists in Europe did a clinical trial involving C-8. They thought it would help fight cancer. They intentionally gave large doses of it to people. These are third-party scientists. Would anybody do that if they really thought it was likely to cause harm, the standard you're to use? 2009, state of the knowledge. Evaluate DuPont's conduct on the state of the knowledge through the years.

You saw Defendant's Exhibit 2338. 2010, we're already up to the '10s. Three highly qualified, preeminent epidemiologists from around the world get together and look at this. The health effects of C-8. What do they conclude? To date, data are insufficient to draw firm conclusions regarding the role of PFOA for any disease of concern.

2010. DuPont has already been filtering the water since 2006. All of these things happen later saying we're not seeing it. Once again, DuPont acts first to protect people by filtering the C-8 out of the water while the facts are being checked out.

You're going to see in the jury instructions number 17, Instruction No. 17. The judge is going to give you a pamphlet.

Parties agree to have a science panel study what? Whether, whether, there was a link between C-8 and kidney cancer. That panel concluded in 2012 there is a probable link. That's when they came up with their conclusion. Did DuPont just sit back and wait for that? No. Acted first to protect people, filter the water, while they're looking into it.

Let's move on and talk about negligent infliction of emotional distress. You're going to see the law on this in Instruction 25, the four different things that Mrs. Bartlett is required to prove for that, including that DuPont was negligent, she suffered a serious emotional distress, it was the proximate result of negligence of DuPont, and it was reasonably foreseeable by DuPont.

As you've seen from the evidence, she cannot prove any of those elements. For example, as we already discussed, she cannot prove negligence. But she also can't prove serious emotional distress because you're going to have Instruction 26. Instruction 26, serious emotional distress. She has to prove she in fact possesses an increased statistical likelihood of developing cancer and from this springs a reasonable apprehension that manifests as emotional distress.

Here you heard both Dr. Cohen, Dr. Rickard. C-8 has been filtered out of her water supply for nearly ten years now. With a half-life of 2.3 years, which is undisputed, her blood levels of C-8 are now well below the mean of the background

levels of everybody across our great country.

Do we have that graphic?

You heard her blood levels were measured in 2005 at 19.5 parts per billion. Half-life, one of these fancy scientist terms, but every 2.3 years it goes down by half. You can do the math yourself. It does down to 9.7, 4.8, 2.4, by last year down to 1.2 parts per billion. You heard that the mean or average background level for people who don't live anywhere near this plant is about 4 parts per billion in the blood. And the range goes up to 77. Don't be misled when they talk about 99th percentile. They're talking about the 99th percentile for everybody across the country that doesn't live by one of these plants. So she's within background -- by their own admission, she's within the background of the range of people across the United States. But today -- that was back at the 19.5. Today, after these half lives are gone, she's got a very low, very low, comparatively, part per billion in the blood.

The bottom line, it is undisputed based on the record facts, which is what you need to base your decision on, Mrs. Bartlett is not at any increased risk of kidney cancer from her past C-8 exposure. You heard she's at risk for some other reasons because of her hypertension, her obesity, her genetics, other things. We'll talk about that in a few minutes.

While we're on what you need to decide in the specific

instructions you're going to get, let's talk about actual malice for a minute. You're going to have Interrogatory 33. If you find for Mrs. Bartlett, which we don't think you'll get to this question, but if you did, you'll be asked whether Mrs. Bartlett prove by - what? - clear and convincing evidence whether DuPont acted with actual malice, and whether she proved actual damages that resulted from those acts.

Your Honor will explain to you what clear and convincing evidence is. It's a higher burden of proof. Clear and convincing evidence, not just preponderance of the evidence. And with - what? - actual malice like hatred or we wanted revenge or something, get back at her.

You're going to get the following instruction. Malice means a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm. Substantial harm, serious injury, not just that an enzyme level has been altered a little bit, it's still within normal range. Substantial harm. A great probability. Not just a risk, not just possible, great probability, a near certainty that substantial harm is going to occur. And most importantly, probably, conscious disregard, that you actually know there is a near certainty of a very serious injury and you make a conscious decision to do something anyway knowing that serious injury is a near certainty.

Here, as we've discussed, all of the evidence is the

direct opposite of that. DuPont did not expect any harm to the community. Counsel talked about, well, DuPont didn't know some things. You can't have a conscious disregard of something you didn't know. The two just don't fit.

There's no evidence, much less clear and convincing evidence, of any of these three factors. Even Dr. Siegel admitted that there's no actual malice. Siegel 3:

> Sir, you're not contending any employee of DuPont had actual malice?
>
> No.

Your answer to that will be no, if you even get that far.

The third thing I told you I would prove is that Mrs. Bartlett's kidney cancer is readily explained by other things and was not caused by any conduct by any DuPont employee. And here, ladies and gentlemen, it's very, very important that you keep in mind the difference between general causation and specific causation.

General causation is just whether a substance is capable of causing a particular disease. For example, we've used the analogy through the trial about tobacco smoke. Nobody disputes that tobacco smoke is capable of causing lung cancer. That's general causation. Specific causation, the much more important issue, the one you need to decide in this case, is Mrs. Bartlett still has the burden to prove whether the C-8 in

fact caused the kidney cancer in this specific individual, Mrs. Bartlett.

And on this, you heard some very important and undisputed facts. You heard that, unfortunately, kidney cancer occurs every day all across the United States. And you heard that kidney cancer results from many, many, many different things besides exposure to C-8. You heard that the risk factors for kidney cancer includes a very long list, including family history, genetics, smoking, hypertension, age, obesity, spontaneous DNA replication errors, many, many things.

You saw some other things. You saw that Mrs. Bartlett had the most commonly occurring type of kidney cancer all across the U.S., and she had one of the major risk factors for kidney cancer: obesity.

Please, do not be misled by what the science panel found in 2012. As you heard, in 2012, the science panel found that C-8 was capable of causing kidney cancer. We talked about that on the time line. That was in 2012. Not in 1980, not in the 1990s. And importantly, there's two other very important issues that are crucial for what you need to decide that the science panel never commented on, never commented on, and they're for you to decide.

The first issue: when, when was it known that relatively low C-8 exposures like the ones that Mrs. Bartlett's claiming, community levels of exposure, could cause disease in humans?

And you need to make that determination, everybody agrees, without 20/20 hindsight, not as a Monday morning quarterback.

We've already mentioned the Emmett study from 2006, community study in 2006 looking at people with much higher exposures than Mrs. Bartlett. No positive relationship, no toxicity from C-8 was demonstrated, funded by independent third parties, the Environmental Justice Program.

You heard what the three independent preeminent epidemiologists said in peer-reviewed literature in 2010. No -- to date, data are insufficient to draw conclusions regarding the role of PFOA for any disease of concern.

The plaintiff's lawyers would have you believe that DuPont should have concluded that low community levels of exposures were likely to cause disease back in the 1980s, despite the fact that third parties were saying there's no evidence of that as late as 2006 and 2010. Don't be misled about that.

The second issue, whether there are other explanations for Mrs. Bartlett's kidney cancer besides her exposure to C-8. And again, you heard it's undisputed that just because C-8 is capable of causing kidney cancer, that does not mean that it did cause Mrs. Bartlett's kidney cancer. Dr. Siegel admitted that. Siegel 8:

> We can agree just because a substance is capable of causing a disease, it doesn't mean it did?

That's correct.

Difference between possible and likely, difference between potential risk and likely, he acknowledged all those points.

Dr. Bahnson admitted this too. Bahnson 1.

My very first question in cross-examination to Dr. Bahnson:

Doctor, you agree that just because something is capable of causing a disease, it does not mean it did cause the disease in a specific individual?

True.

When you get the jury instructions, ladies and gentlemen, you're going to see this relates to what the law calls proximate cause. We like to come up with fancy words for things that are really pretty simple.

We can see in Instruction 22: Proximate cause, an act or failure to act that was a substantial factor in bringing about an injury and without which the injury would not have occurred.

This is Mrs. Bartlett's burden of proof. The judge will tell you, DuPont does not have the burden to show anything. She is the one that has the burden of proof.

What did the evidence show?

You heard Dr. Bahnson. You heard Dr. Cohen. They both told you Mrs. Bartlett had renal cell kidney cancer, the most

common type of kidney cancer all across the United States. The type of kidney cancer that was occurring across the United States before C-8 was ever being used by anybody. They both told you there was nothing atypical, nothing atypical, about Mrs. Bartlett's kidney cancer. You heard this type of kidney tumor has a very slow growth rate, only about 0.28 centimeters per year.

Counsel tried to dismiss it as, well, that's what a textbook said. You heard Dr. Bahnson admitted that. It was a meta-analysis, a study that looked at all the different studies that had been done on this type of tumor's growth rate. And the average for all those studies was .28 centimeters per year. You heard that with a tumor that was 3.2 centimeters in 1997, it had to start more than 11 years before that. And you heard Mr. Douglas refer to the fact that there was even some mention, could have been 20 years before that, before she was ever even exposed to C-8 in her drinking water.

Now, you heard about this very long list of risk factors, and you heard about what Dr. Bahnson did and, more importantly, what he did not do to check them out.

Remember, he said the two he thought were most important right at the top of his list: family history and genetics. But then we asked him about that, up the family tree, what he did to look into that.

I apologize. We didn't pay for fancy animation.

Mrs. Bartlett, like most of us, has a mom and a dad. Each of them have a mom and dad. Each of them have a mom and dad. We all have a family tree, family history. What did Dr. Bahnson look at? He knew about one person, her dad.

What did he know about that person? He had four different types of cancer, her dad. I'm not claiming he had renal cell kidney cancer. He had a different type of kidney cancer. You heard Dr. Cohen, that puts up the yellow flag. You've got to pay more attention to family history when there's something like that going on. Bahnson did nothing to look into that, nothing.

His second factor most important: genetics. You heard this. Dr. Cohen, who has spent his life studying this, 70 percent of renal cell kidney cancer, the specific cancer that we're here to talk about, is a result of a VHL gene deficiency on chromosome 3. You recall Dr. Bahnson danced around with that a little bit. You got the story, the actual facts, from Dr. Cohen. 70 percent of people that have this have a deficiency in their genes, the VHL gene, on chromosome 3. What did you hear? Dr. Bahnson did no genetic testing on Mrs. Bartlett, even though Dr. Bahnson was forced to admit that it's rare that heredity does not play a role in cancer.

Bahnson 2.

- - -

Thereupon, video was played in open court as follows:

Q As you sit here today, do you have any opinion or thought as to whether heredity played a role in Mrs. Bartlett's cancer?

A To the extent that I think it's a rare situation, that it doesn't play a role in any cancer.

- - -

MR. MACE: Yet he doesn't even do genetic testing.

Employment. You heard how Mrs. Bartlett for decades went over to the dry cleaner for lunch every day. And even Mr. Petty acknowledged that dry cleaners admit chemicals that are known to be capable of causing cancer. You heard about spontaneous DNA replication errors, fancy word for the fact that as our cells divide in our body every day, it happens lots of times and they can be spontaneous. They just don't work right every once in a while, kind of random error, that you have spontaneous DNA replication errors.

You heard about other unidentified causes. The fact that many times, despite the desire to find something to blame, which we all would have, despite the desire to find something to blame, a lot of times we just don't know. We just don't know what caused a particular cancer.

And remember, Dr. Bahnson earlier testified that he would not expect an external chemical to cause kidney cause.

Bahnson 3.

- - -

Thereupon, video was played in open court as follows:

Q In a case like hers, based upon your personal consideration and/or investigation of potential cause of kidney cancer, would you expect there to have been a connection between her kidney cancer and any sort of chemical or external substance?

A Would not.

- - -

MR. MACE: And before he met with the plaintiff's lawyers, before he agreed to get paid as an expert in this case, he could not say that C-8 or any chemical caused Mrs. Bartlett's kidney cancer.

Bahnson 4.

- - -

Thereupon, video was played in open court as follows:

Q And you certainly could not testify in this case that her kidney cancer was caused by C-8 or any other chemical; is that right?

A Correct.

- - -

MR. MACE: You heard from Dr. Cohen. Dr. Cohen has studied chemical carcinogenesis, what causes cancer, the very issues at issue in this case, for more than 40 years. He's lived his life studying these issues. You're going to have his CV. It's at 1461, but I think all the CVs are going to be a

separate package for you. One hundred and twenty pages of all the work he's done that you'll be able to look through, his qualifications.

Now, I hope you see that I've treated witnesses with respect, and I hope you see that Dr. Cohen treated Dr. Bahnson with respect. We're not all experts in everything. He acknowledged Dr. Bahnson is very good at diagnosis and treatment. He is a very fine surgeon. He did a great job with the surgery, no complications, quicker than normal recovery. We'll talk about that in a minute. But what he's not, he is not an expert in etiology, he's not an expert in causation, he's not an expert in what Dr. Cohen has spent 40 years of his life studying.

And you heard from Dr. Cohen that Dr. Bahnson did not have the specific expertise on the etiology or causation. He didn't do his homework on the causation here. He didn't adequately investigate these other explanations for Mrs. Bartlett's kidney cancer. And we talked about weighing of the competing considerations. And he talked about so if we were in a tobacco case, you would be talking about the number of pack years somebody had. If they had both smoking exposure and radiation exposure from x-rays, you would want to know, to come to an opinion on specific causation, how many x-rays did they have? Is this somebody who had two x-rays over 40 years, or is this somebody that had 50 x-rays every year for three

years? Is it somebody who smoked a couple of cigarettes a day, or somebody who had three packs a day for many years?

And in terms of weighing the competing risk factors, you heard Dr. Cohen. Because of Mrs. Bartlett's obesity, her morbid obesity, she was off the charts in terms of number of pack years when you look at what would that factor be; that it was 90 percent increased risk of kidney cancer. It's higher in women than in men because of her level of obesity.

He analogized this to you're talking about somebody who would be like having three packs a day for many years, smoker, as opposed to the C-8, which you've seen from a number of witnesses, she really was in the background even back at that time. Even when it was measured in '05, she was within the background range of the general U.S. population. She was low on the end in terms of people living around the plant, the people living in her water district.

You heard that Dr. Bahnson did not even bother to pull out the scientific literature on the close link between obesity and kidney cancer. In questioning by Mr. Douglas, Bahnson 5:

- - -

Thereupon, video was played in open court as follows:

Q If I understand correctly, you did not go out and do specific research and pull specific articles on obesity and renal cell carcinoma for purposes or rendering your report; is that correct?

A Yes.

- - -

MR. MACE: Didn't even bother, didn't take the time. You've been sitting here for three weeks. He didn't take the time to even go back and look at the literature before rendering his report. You heard he was retained at the end of November. Within two weeks he had a page-and-a-half-long report, couldn't even bother to spend the time to pull out the literature and actually learn about what he wanted to come in here and talk to you about.

You heard, when we confronted him at trial with the literature, including the things he says he relies on in his everyday practice, he said you need to ignore it. The American Cancer Society and their statements about it being a causal risk factor which causes an estimated 30 percent of cases, obesity. The American Urologic Association, similar statements. Campbell's *Urology* used in many of the medical schools, ignore that. *Adult and Pediatric Urology*. Numerous textbooks and articles. We didn't take your time up to go through all 20-plus of them.

He stuck his head in the sand claiming everybody else was wrong: the American Cancer Society, The Urologic Association, National Institutes of Health. Everybody else is wrong. Of course, since his trial testimony conflicted with his deposition testimony, he even disagreed with himself.

But keep in mind, ladies and gentlemen, as you're sitting back in your room deliberating, the law tells you what to do if you cannot make up your mind as to what caused Mrs. Bartlett's kidney cancer. You will have the law on proximate cause. Instruction 15, I think it is. If the weight of the evidence is equally balanced, or you're unable to determine which side of an issue has the preponderance, the party who has the burden of proof - Mrs. Bartlett - has not established such issue by preponderance of the evidence.

I told you we don't have to prove to you anything. It's her burden to prove. She's the plaintiff. She's the one making a claim against us. She needs to prove it under the law. If she can't, your verdict has to be for us. The ties go to DuPont. If you can't figure out what caused her kidney cancer, Mrs. Bartlett has not met her burden of proof.

Now, you shouldn't reach the issue of damages, but let me mention a few things. You heard that Mrs. Bartlett was not having any symptoms, no pain in her kidney, nothing like that. Her kidney cancer was found during an examination for a different gallbladder issue she was having. The doctor, Dr. Bahnson, was able to successfully treat it by removing a small portion of one of her kidneys; no complications from the surgery, no chemotherapy, no radiation, no further treatment required because they caught it so early. As Mr. Douglas mentioned, Grade 1, Stage 1, the absolute lowest level of tumor

possible. They successfully removed it before it caused any other problems, clear margins. They got it all. Her recovery was quicker than normal. Thankfully, she's been cancer-free for nearly 20 years now. You heard that is not likely, not likely, that her cancer will return. Even her doctor admitted that.

You also heard about a number of other issues Mrs. Bartlett has had. Mr. Douglas mentioned them. And they fully explain -- these are totally unrelated to her kidney cancer, totally unrelated to any claims about C-8, and they fully explain the various pain and suffering and similar things she talked about. You heard about her ear surgery, that genetically she had some issue with the bones in her ear. She had to have a metal plate put in her head, the gallbladder surgery, back surgery, uterine fibroid surgery, a C-section, a hysterectomy, the doctor nicked her bladder, had more surgery. She had a heart catheterization. They had to scrape the nerves off her bones, degenerative disc disorder.

In short, you saw she's had a host of other medical issues totally unrelated to her kidney cancer that well explain any of these emotional distress issues she's claiming.

As you're deliberating, please keep in mind the foam board we showed you in opening statement. This case is about Carla Bartlett, nobody else. It's about community exposure levels. It's about Tuppers Plains District Water. She's not

claiming any exposure from any landfill.

Before June of '97. We'll get back to speculation and context. Before this 1997 issue, as we discussed in opening statement, despite all the advances we made in science, we still haven't figured out time travel. There is nothing that happened after 1997 that would allow DuPont or anybody else to go back in time and do things any differently than had already happened. Nothing that DuPont or anybody else knew or did after 1997 could have any effect on whether Mrs. Bartlett was diagnosed with kidney cancer in 1997.

And they talked a lot about this science panel. But when you're evaluating the reasonableness of DuPont's conduct, you need to do it at the relevant time period. And that finding, there's no dispute, did not come out until 2012. So, please, keep the dates in mind.

Now, as I mentioned -- and you're going to hear from Judge Sargus in a bit -- Mrs. Bartlett has the burden of proof in this case. And he's mentioned already, you're going to hear again about this preponderance of the evidence, the greater weight of the credible evidence admitted in the case. But instead of that, what you've heard throughout the trial from the plaintiff's lawyers and their witnesses have been arguments about what might be, what could be, possibilities.

That gets us back to the speculation point. Under the law, maybe is not enough, speculation is not enough, possible

is not enough, and context is very important. Mrs. Bartlett has the burden of proof, and you cannot find in her favor if she fails to prove every element of what she's required to prove. As you evaluate the evidence, you need to hold Mrs. Bartlett to her burden of proof. It's part of the oath you took when you agreed to sit as jurors. I know you'll do it.

You're going to have some forms, four or so, that you're going to have that you'll need to fill out.

Jury verdict form for negligence claim. Do you find in favor of Mrs. Bartlett on her negligence claim? For the reason we discussed, your answer is clear. No, she hasn't proved that.

On the negligent infliction of emotional distress, do you find in her favor on that claim? Your answer is clear. No, she hasn't proved that.

I don't think you'll get to this one, in terms of amount of damages. Let's get to the next one.

I don't think you'll get to this one either. If you found in favor of Bartlett on any of her claims, do you find that Bartlett has proven by clear and convincing evidence DuPont acted with actual malice and she's presented proof of actual damages resulted from those acts or failures to act?

The answer is clear. No. In fact, on the evidence you've heard, if you even got that far, it would be, no, with

an exclamation mark. It's the opposite of what you've heard. You've heard of a company that acted first to protect people while it checked out the facts. That's what you've heard.

Your Honor, this a good time for the break.

THE COURT: Yes. We'll take a 15-minute recess at this time, ladies and gentlemen.

(Recess taken from 2:13 to 2:43.)

THE COURT: Mr. Mace, you may continue.

MR. MACE: Thank you, Your Honor.

Welcome back. Before I wrap up, I want to talk for a few minutes about some of the things that have been raised by Mrs. Bartlett's lawyers, because what you saw through the past three weeks is speculation and things taken out of context.

For example, you saw quite often a chart, Plaintiff's Exhibit 13001. And there's several important points here. First, whether you're talking about a smoke stack into the air or an outfall to the Ohio River, emissions do not equal exposure. Emissions do not equal exposure to an individual.

We talked -- I used my little handwritten drawing of a smoke stack, but we looked at the concept of a smoke stack that goes up into the air. Mrs. Bartlett doesn't claim that she was at the top of any of the smoke stacks at the plant. She doesn't claim she was at the end of the outfall going into the Ohio River. The concept, whether you're talking about emissions into the air or emissions into the water, as things

get released, they disperse and dilute down to non-harmful concentrations before they ever get in the zone of anybody in terms of exposure; difference between emissions and exposure. That's somebody that's playing on the wrong things and trying to distort the facts to try to get you focused on emissions instead of exposure.

Second, you can always play with the scale on any graph. You can make things look more dramatic than they are. But was that fair? You need to keep things in context.

You heard that many other companies emit many hundreds of thousands of pounds of substances into the air and water. But, more importantly, you heard that the Ohio River has an enormous, huge, volume going by the plant. You saw Defendant's Exhibit 169 at page 12. C-8 in the river. Average Ohio River flow, 13.88 billion pounds. Per year? No. Per month? Per week? Per day? 13.88 billion pounds an hour.

And then look at what these attorneys did in the chart they probably showed you more than any other exhibit in this case. They started off with their 13001. They would have you believe that they were showing you release to the Ohio River, as if the muddy Ohio is in here somewhere.

We took their data, put it on a graph. They say release to the Ohio River but, in fact, this is totally out of context. This is the pounds released as if the Ohio River wasn't even there, just a dry stream bed. And if we try to take into

account the flow of the Ohio River in one second, one second, what happens to their bars? They disappear.

Now, they're using annual emissions per year. You consider the flow of the river for one second, ladies and gentlemen. All we've done is change the scale to what the flow would be for the Ohio River in one second. Let's look at it for a minute, for an hour, for a month. Let's go to the year. Apples to apples, the concentrations being released into the river compared apples to apples to the flow of the river in a year, you can't even see it. It's not even there.

Remember our example about the temperature on the courthouse steps in January. If things warm up from one degree to three degrees, they triple, but does it feel any warmer outside?

When you look at the plant emissions in the context of the massive flow of the Ohio River, you see that plaintiff's lawyers are unfairly and inaccurately distorting the facts, trying to play on your emotions instead of the facts.

New topic. You heard this phrase repeatedly from their experts and from these lawyers: industry standard of care. But then on cross-examination, you saw that the plaintiff's experts did not know a single thing about the relevant industry standard of care. Their experts came in here with blindfolds on. They didn't even bother to look into what other companies using C-8 were doing.

Siegel 4:

What did you do, sir? Tell the jury everything you did -- this is Mr. Siegel -- to check out the other companies besides DuPont and besides 3M, the other countries across the country that were using C-8? What did you do to look into their practices?

I didn't look into that issue. Didn't look into that.

Petty 2. Mr. Petty:

Well, you can't list all of them. Can you list any of the other companies besides 3M and DuPont that were using C-8?

I haven't looked that up. I know a lot of paper companies were using C-8 as a coating for popcorn bags and everything, would let grease move through.

You say you've looked at the industry standard of care. But the fact is, you did not do anything at all to compare DuPont's conduct with the other companies in the industry that were using C-8, true?

That is true.

For Mr. Petty, who wouldn't admit to me that the sky is blue but he admitted that.

These experts stuck their head in the sand because they want to completely ignore that the undisputed evidence showed that DuPont was doing far more than any other company was doing

in terms of trying to use C-8 in a responsible way, in trying to make sure that it would not cause harm to humans.

You will remember Mr. Petty, not a Ph.D. in any topic, not an M.D., not board certified in toxicology, not board certified in epidemiology, admitted he has never been responsible for setting human exposure guidelines for any chemical.

Petty 1: Acknowledged he's been deposed perhaps 150, 200 times.

In all those times, prior to this case, can you cite us a single example where you've ever offered opinions regarding a private company's compliance with a standard of care regarding warnings to a community?

That was his entire spiel here: Should have warned the community.

I don't recall one, don't recall one.

A mouthpiece brought in here to say something he's never said before, not his area of expertise. You heard about his testimony on scaffolding cases, air conditioners, swimming pool liners, roofing, a forklift, mold. He's never had any experience with C-8, none. His claim to fame, he's testified for plaintiffs' lawyers more than 93 percent of the time. He's been paid more than $3,000 a day to come here and talk to you. But his expertise did not fit the issues in the case. The plaintiffs brought you a fork when you needed a spoon. This

case has to do with toxicology and epidemiology, and he's not an expert in either of those.

They talked about the surveillance reports, these periodic reports that DuPont did, that DuPont was able to do because it was proactive enough to have a registry where it kept track from the 1950s at what was going on at its plants, decades before the EPA, decades before any of these federal agencies: OSHA, NIOSH. DuPont was a leader in being able to even do these types of analyses and look backs.

Now, you were told there was an excess of kidney cancer at the plant. I think you heard it again today. But then you saw that DuPont took this extremely seriously. They investigated the work histories, where were these people working. You heard this plant was a huge plant, 2,500 people, more than a hundred different buildings. Only about a quarter of the plant was involved with C-8. They looked at the work history of those people and they found that the people showing up having cancer were not the people working with C-8.

You saw Defendant's Exhibit 2452 where they looked at those eight individuals on that report in 1989. They looked. What department were they in? What division were they in? And seven of the eight never had any experience with C-8, never any experience in Teflon. One of the persons had about three years. Was that some type of a signal, a red flag, a yellow flag, something that, oh, my goodness, there is a cluster in

the Teflon workers? Absolutely not. If anything, it pointed in another direction. These aren't the people working in Teflon.

More importantly, you heard that in the same time period, 1989, they analyzed, they did periodic reviews of what are we seeing in the blood levels. This was, let's look at all the people at the plant being exposed to thousands of different chemicals, lots of different processes. Is anybody having any disease? We look at the people that have disease; very few, one, a little bit of time in Teflon; generally, no, seven of the eight, no, not working in Teflon.

Come at it the other way. What about the people that are working in Teflon? We're monitoring their blood. What do we see? Exhibit 14. They look at the people with parts per million levels in their blood. You will see this, Defendant's Exhibit 14. About 40 different people that had the highest blood levels. You can see these are people that have been monitored for decades, back in the late '70s, right when 3M first said, Hey, DuPont, by the way, we're seeing elevated organic fluorine in our workers' blood. Just wanted to let you know. We're not seeing any disease.

DuPont jumps on it. They're monitoring people. They have people. We talked about 3M had some people up at 70 parts per million, 70,000 parts per billion. DuPont had people 2.5, 9, 8, 6. These can be considered thousands in parts per

billion, 24,000 parts per billion, 33,000 parts per billion in the DuPont workers.

You heard Dr. Playtis. He was directly involved with this, looking back with Dr. Power, the plant doctor who had been there for decades, looking back at the medical records of the people most highly exposed. No medical problems, none. Whichever way they looked at it, the people having disease, are they working in Teflon? No. The people with the high blood levels having disease? No. That was what DuPont knew. That was the state of the knowledge, not what was portrayed to you.

Contrary to their claim, you saw that DuPont did communicate appropriately with third parties. You saw this plant employed approximately 2,500 people plus about 400 contractors. Approximately 3,000 people employed at this plant. You heard that almost all of them lived in the areas around the plant, and you heard that in many ways the DuPont employees, with their spouses, their children, additional family, neighbors and friends, they were the community. You heard that DuPont kept its employees very well informed. You heard there was never any blood oath: All right, Susie, Jerry, not a word of this to anybody outside the plant. When you leave, what stays in -- what happens in the Washington Works plant, stays in the Washington Works plant. Nothing like that. No blood oath. Don't tell anybody. People talk. People live with other people. People have family members. All of these

things are discussed.

You will recall that the plaintiff's expert admitted that they kept their employees well informed. Dr. Siegel said that; very well informed, and we showed you the testimony earlier.

They also ignored the Community Responsible Care Team in existence since 1990, a couple dozen community members from different walks of life who were brought in monthly at first, then quarterly, to chat about whatever concerns they had about the plant. They were given updates. They were given updates on these various landfills, on the permits, on C-8 was discussed with them. Plaintiff's experts want to ignore that.

You heard that DuPont gave many notices to the public agencies that are charged with protecting the public health, agencies like the United States EPA, annual budget of billions -- with a B -- dollars, a team of more than 1,500 -- 15,000 scientists; agencies like the West Virginia Department of Environmental Protection, budget of more than a hundred million dollars a year, a team of more than a thousand people; agencies that had toxicologists, epidemiologists, industrial hygiene experts and other scientists with the expertise to evaluate information on chemicals and exposures and likelihood of harm; agencies that had the resources and power to take whatever steps are needed to protect people from harm.

Some examples, Defendant's Exhibit 1837. 1985 West

Virginia Division of Water Resources, U.S. EPA. The C-8 surfactant has also been detected in the aquifer at parts per billion levels, just above the analytical detection limit.

Exhibit 1943. 1990, West Virginia, U.S. EPA. The Lubeck Public Supply Wells have detectable levels parts per billion of ammonium perfluorooctanoate, also called C-8. Washington Works is in the process of purchasing these wells from Lubeck.

Exhibit 750. 1992, meeting with West Virginia Department of Natural Resources, including the chief.

Next page. All important issues, including biopersistence, the accumulation of C-8 in the blood were mentioned. All the names for C-8 were brought out. Monitoring results and nearest neighbors were reviewed. There was no concern voiced about spread offsite. From West Virginia, agencies charged with protecting the public health. One part per million, C-8 was not an issue. The concentration in the Ohio River is calculated to be at least a factor of one hundred less than the CEG water, one hundred times less than the back-up buzzer which had 30,000 safety factor built into it; not discussed, but we were prepared.

And there were notices to the local water district, Lubeck, Exhibit 295. 1989, Lubeck Public Service District. We performed analyses for C-8 and Lubeck water taps from '84 to '88, concentrations of 1 to 2.2 parts per billion. We have

noted accumulations in the blood of workers, no adverse effects on employee health. We reported all of this to U.S. EPA, West Virginia, back in '85. We saw the earlier letters back in '81 when they had the false positive with the rat study. There were notices given.

You saw in Plaintiff's Exhibit 518, from September of '91, and then on page two about this water sampling that was being conducted. Sampling was conducted and completed September 11, 12 and 13. By whom? By a bunch of people including assistance from Bill Packard, Lubeck.

Lubeck was involved in some of the water sampling; no sweeping under the carpet, no hiding things, not what you were told.

Ladies and gentlemen, you can remember what Dr. Karrh said when he was deposed. I think it was about 15 years ago. We have that video clip.

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Thereupon, video was played in open court as follows:

Q What would be an important factor for determining whether the local community should know that this particular chemical was in their drinking water?

A I think it would depend upon how much of the material was in the drinking water and whether or not we felt that there might be a significance risk of any kind, or even a potential risk of any kind, and subsequently then try to make some

judgments based upon that. We didn't have any reason at that point in time to think that there was a health hazard from the levels at which the community might be exposed.

- - -

MR. MACE: That makes sense, doesn't it, ladies and gentlemen? You heard the testimony. That's reasonable. In fact, you heard Dr. Siegel who, again, didn't agree very much with me -- the plaintiff's experts said the same thing. Siegel 2.

- - -

Thereupon, video was played in open court as follows:

Q You would agree, sir, if you have no reason to believe that the person is going to be harmed, there's no need to disclose exposure information, right?

A I would generally agree. I don't think that it's incumbent upon every company to inform the public of every single pollutant that it is emitting. I think you're correct, that where there is suspicion of potential health effects is where you need to disclose.

- - -

MR. MACE: You will recall that we talked about the analogy to automobile exhaust. That helps us understand a couple of important points, because it's undisputed that automobile exhaust contains a lot of dangerous, toxic and cancer-causing chemicals, capable of causing cancer. But in

terms of exposure or dose, there is a very big difference between having your nose at the end of the tailpipe and standing ten feet away, 50 feet away. There is a very big difference between emissions and exposure. Dose is critical.

More importantly, for the topic we're on right now, in terms of what a reasonable person would do in warning others, we all drive by dozens, if not hundreds, of people every week, if not every day. We don't stop to tell them that we're putting chemicals that are capable of causing cancer into the air they're breathing while we drive by in our cars and trucks. Our children are exposed every day to diesel exhaust fumes from school buses, fumes that contain numerous chemicals that are capable of causing cancer. The bus driver doesn't warn them or their parents that they're being exposed to chemicals that are capable of causing cancer. And why not? Because the exposure, or the dose, is so low that no harm is likely. Remember the big difference between a mere possibility and what is likely.

We talked about things like airplanes, and you can think about elevators. Every time you step onto an airplane, every time you step onto an elevator, there's always a possibility, a risk, that the plane is going to crash or the elevator is going to fall down the chute. But that's far different than it being likely that the plane or elevator will crash. Court of law requires likely, not possibility.

DuPont's public statements in the 2000s. You saw that

DuPont's statement were the same as what U.S. EPA, NIOSH, ATSDR, these three eminent epidemiologists, Dr. Emmett in 2006, what all the third parties were saying. Importantly, as well, you heard Mrs. Bartlett. She did not even hear, much less rely on, anything DuPont said about C-8. Bartlett 1:

You've never had any direct contact with anyone from DuPont?

No.

You don't recall seeing or hearing about any communications from DuPont on any subject at any time?

Not to my knowledge.

You've never read or reviewed any statement that DuPont has made about C-8?

Not that I remember.

Mrs. Bartlett's testimony under oath.

Incineration and these MSDS sheets. You saw that the MSDS sheets are for employers, and they apply to the pure chemical, not the diluted form after it's been through the process.

You saw Defendant's Exhibit 1046 from 1991 talking about the supernate. After it's been through the process, they call it supernate. It's a highly diluted form. They're talking about a change in the handling of the supernate to be sent for offsite incineration as opposed to sending it to Chambers Works for waste water treatment. You're going to recall they tried

to pick out some sound bites. Those 3M MSDS sheets talked about waste water treatment.

And in terms of when this started, you saw the other document, Plaintiff's Exhibit 1024, from 1986, the mid-'80s talking about the supernate.

Next page: Waste disposal to be sent to Chambers Works or Ohio Liquid Disposal, a commercial disposal facility.

They want to talk about a small stream that did end up in the Ohio River, the majority of it, commercial treatment from the mid-'80s. And you saw that 3M wasn't incinerating its C-8 waste. You heard they were disposing of it to the surface water, the land and the air. In fact, if you were listening carefully, you heard that DuPont was always incinerating more than any other company.

The Toxic Substance Control Act. You heard about this again today. Defendant's Exhibit 237. You're going to have our Exhibit 237, our side of the story, the rest of the story, because this was vigorously contested. They painted as if you should accept as true everything EPA was saying. When did this happen? This was the mid-2000s, mid-2000s.

DuPont denies that it committed any of the violations alleged. We fully and promptly reported to EPA all the information we were supposed to report. The small amounts of PFOA that we discovered in a blood sample and drinking water did not suggest that there was any risk, any risk, to human

health. Consistent with what the third parties were saying, much less a substantial risk.

You heard about the ambiguity in the reporting requirements over the years. Later in the document: As supported by the science, there's no none adverse health effects. There was and is no substantial risk information to report.

There is a whole different side to that story. I didn't take your time up to have you go through this 40- or 50-page document. If you're interested in it, you can go there and see. There's a completely different side of the story.

Also, importantly, in the plaintiff's exhibit they kept showing you, Plaintiff's Exhibit 558, December of '05, that's the time period we're talking about. Let's go to that other page. This is at page 11 of that. They talked about litigation risk, the litigation risk. This is EPA inside their offices that they thought nobody would ever see. Litigation risk. There was significance risk EPA would not be able to prove successfully that the violation directly disrupted EPA's risk assessment activities.

They would have you believe that these two innocuous, irrelevant pieces of information that DuPont didn't think it was required to report somehow would have changed the world. EPA recognized that wasn't so, and they weren't going to be able to prove it. In fact, they realized they're probably

going to be barred by the statute of limitations because they're trying to raise things from an earlier time period when the guidance was different, that happened long ago.

More importantly, you got another limiting instruction by His Honor that you are required to follow in this case.

DuPont and EPA agree to settle the claims by entering into a consent agreement that acknowledges that DuPont denied liability and expressly stated that nothing in the agreement should be taken as an admission of liability by DuPont.

This is His Honor's instructions to you.

Further, you may not infer liability nor draw any conclusions about DuPont's potential liability in this case based on the fact that it settled EPA's 2004 administrative claim against it.

That's what you've been told. That's what you have to follow. The facts are far different.

Connect the dots. I can't believe we even heard that this morning. For some reason, Mr. Papantonio loves that document, connect the dots, a sound bite out of context, never referenced, not once, not once, by any of the people who are dealing with C-8. Not once. They didn't link that up at all.

You heard, in short, that we had answers to every item they raised. They said DuPont's a corporation. True. But Judge Sargus will tell you all persons stand equal in front of a court of law.

You've all seen - I don't think we have one in the courtroom - pictures of Lady Justice, a woman holding the scales of justice. What does she have on her head? A blindfold. A blindfold. Because as His Honor will tell you, all persons stand equal in a court of law. We're all to be treated the same. We're a corporation, but that's not supposed to enter into your decision at all. We're two equal people here looking for the best of the best of the jury. You guys have listened to it. You know what you heard. We're two equal people, and you're not supposed to treat us any differently. You all promised us in jury selection that you would follow that.

They want you to believe profits over safety. But what did you see at trial? Not one document, not one document, that said it, profits over people. You saw the opposite. DuPont's attitude demonstrated time and time again actions speak louder than words, protect people first while we check things out.

I didn't hear yet today -- maybe it's coming, but they said the other day to several of the witnesses: You got it wrong. You got it wrong. 2012 science panel came out. You were wrong. You got it wrong.

That is not the issue here. That is not the issue here. The issue for you to decide is reasonable conduct at the relevant time, before the science panel finding in 2012.

As I wrap up, ladies and gentlemen, was DuPont perfect?

No. Is any of us?

Perfection may be what DuPont would like. It's certainly a good goal to have. But it's not what the law requires. The law talks about reasonable conduct. That's what you're going to hear from the judge. That's what you'll read in the instructions: reasonable conduct, not perfection. Here the evidence showed DuPont was more than reasonable.

Before I sit down, I want to thank you, each and every one of you. It's a long trial, longer than most. And we really appreciate the fact that you paid such careful and close attention. I really do appreciate that. Because one the things that makes our country special is our jury system and the collective wisdom of seven good citizens sitting as a jury. And it works best when the jurors have been as patient as you have been, to listen and to wait for the rest of the story. I trust you because you paid attention, and I feel you did wait to hear the rest of the story.

A few final comments before I sit down. You've seen throughout this case that the plaintiff's lawyers always get to go first. And today you heard that they actually get another advantage because one of them gets to come back up here and talk to you again. But this is my one and only chance to talk to you. And the fact that they get to come back up here brings us to a couple of points.

First, if they raise new issues, I assure you I would

welcome the opportunity to address it. I would have a response to every point they make, but the rules don't allow me to get back up again.

But secondly and more importantly, ladies and gentlemen, we have all invested a lot of time and a lot of energy in this case. DuPont's had to deal with these issues for several long years. You've invested more than three weeks of your valuable time to sit here and listen day after day, kind of trapped because you couldn't leave.

Like the movie *A Few Good Men*, you're entitled to some answers now. When Mr. Papantonio or one of the other lawyers gets back up here in a few minutes, you should look them in the eye and you should ask them to answer the tough questions that despite three weeks of trial they've never answered for you.

One, how does he expect you to find that back at the relevant time period DuPont expected that harm was likely to someone like Mrs. Bartlett, with these low community levels of exposure, when her exposures were so far below any of the exposure guidelines that existed at the time?

Two, how does he expect you to find that DuPont expected that harm was likely to someone with low community levels of exposure when throughout the relevant time period, DuPont wasn't seeing any disease or harm in the people working at 3M or the people working at DuPont who had much, much higher levels of exposure?

Why does he want you to speculate that her kidney cancer was caused by C-8 when there are so very many other explanations for it, and when Dr. Bahnson did such a sloppy job of looking into the other explanations?

Why did they bring you experts who didn't do their homework, did nothing to look into the other companies that were using C-8, and did not have the specific skills in the areas that are relevant to what you need to decide in this case?

Why did they waste your time on so many side issues, distractions, repetition?

You're entitled to answers.

Ladies and gentlemen, I want to thank you very much for your kind attention today and your kind attention throughout the three weeks. I stand before you now, as I told you I would three weeks ago, and I ask you for the only findings that justice require, findings of no liability, no specific causation, no actual malice, and no damages. Thank you.

THE COURT: Thank you, Mr. Mace.

As I mentioned to you earlier, ladies and gentlemen, because Mrs. Bartlett has the burden of proof, she has the last word.

Mr. Papantonio has an additional 15 minutes, and then we'll be done with closing argument.

MR. PAPANTONIO: Ladies and gentlemen, there's nothing

new here. I'm not going to bring up anything new. What I'm going to bring up is the first document I started with. Mr. Mace said to me: Show me a document. Would you please show me a document that shows we knew about cancer back in the '90s.

That's what he said: Show me a document.

Mr. Mace, Dr. Rickard, there's the document.

Could you put it up on the screen, please? Maybe they can read this right along with you. He said show me a document that says we knew about cancer in the 1990s.

Warning, contains a chemical which can cause cancer.

That is talking about C-8.

Show me a document? There you go. Read that.

And it's talking about the fact that not only does it cause cancer, it's talking about Rickard's team up in Delaware, the Rickard team.

Mr. Rickard, was it five times you've been down here drinking the water, six times?

They're up in Delaware. So maybe they didn't see this document. Not likely. They didn't want to talk about the document. Show me a document. How about this document? All that stuff you just heard about we didn't know, we couldn't find out, this says it all, ladies and gentlemen. Please believe me. It says it all.

It says cancer -- and you know what? It talks -- give

me the next slide on that, please. It talks about we're using the very studies that they've tried to run away from, that Mr. Rickard took the stand and tried to run away from. The very studies they have in their file cabinet is telling them in 1997 these are the studies we did jointly. We did this with 3M. DuPont did this with 3M.

Why did Mr. Mace spend all that time just now and not mention this document? Because that's the way the whole trial has been. They've had this in their file cabinets. Mr. Mace had possession of it. Mr. Rickard had possession of it. They knew all about it, and they avoided it because this tells the story. This tells exactly the story.

And the truth is, the truth is, ladies and gentlemen, I can sit here and review the documents again. I'm not going to do that because you have the information. You have -- you've taken notes about it. You begin here and then you go to connecting the dots that Mr. Mace said was ridiculous. That number is what? Would you put that connecting the dots up?

He said this was ridiculous. By the way, I gave you the wrong number. This number is 283. Please write down 283 for connecting the dots. Put connecting the dots with the document that they're still lying about, the document that they're still covering up, the document -- he was up here an hour and a half and didn't show you the most important document that we've been talking about in this trial.

I held it back. I wanted to see how dishonest would they be, how dishonest would Mr. Rickard be. I got a picture of it.

So show me a document?

When you go back into that jury room, you're going to have that document. You'll understand how important it was that nobody wanted to talk about it.

I want to show you something. I want to show you how flippant they are about people's health in the Ohio Valley. I want to show you how they think this is a joke. Put up Reilly. I want to show you the deposition I took of this man. Listen to me. I'm asking him about life and death here. I'm asking about people like Mrs. Bartlett who has counted on this company being honest.

Roll it.

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Thereupon, video was played in open court as follow:

Q In other words, the company actually had this in their own computer system, correct?

A That's my understanding.

Q They kept everything. They had a central clearing house for everything, and this was one thing the company kept, these e-mails you were writing?

A Yes, something I obviously did not understand or appreciate. But that's life.

Q Isn't it a good thing, though, that the company kept this because we can go back and look at history now? It is a good thing that they kept these documents, isn't it?

A You're saying it's a good thing? Mr. Papantonio, you can frame that any way you want.

- - -

MR. PAPANTONIO: That's the attitude of this company.

Do you think this stuff just jumped out at us?

How long do you think it took for Mr. Bilott to assemble part of this?

You were danced around for a hour and a half by Mr. Mace ignoring the time lines.

Please put it up.

The time line tells us everything. If you want weight of the evidence, if you want preponderance of the evidence, please do me this favor. Please. I'm begging you. Go back in the jury room, take this chart, put the documents right on the chart with the time that they knew about it and the amount of emissions and pollution that they put into the river. Please do that. Put that -- I think it's 13001 is the chart. One of you have the chart, somebody hand them the document, say put this on there about what they knew and what they could have known. All you have to do is start with Document No. 8193 and it tells the story about how dishonest these people are.

And I don't have any compunction about pointing my

finger because I've sat and watched this thing unfold. And I had to listen to that for an hour and a half about how we didn't know, about how we didn't bring any witnesses to court. Really?

Do you realize they had a doctor on the stand that did not testify that her cancer wasn't related to C-8? Because he couldn't. Because he knows it is.

MR. MACE: Objection, Your Honor.

THE COURT: That's sustained. That's speculation. Ignore that last comment, if you would, ladies and gentlemen.

MR. PAPANTONIO: He never testified about it. But we brought a witness in that did. And the witness was right here in town and said, Yes, she got cancer related to C-8. They can play games with Deposition No. 1 and Deposition No. 2 as much as they want.

Ladies and gentlemen, it doesn't do any of us any good to sit here and me go through this again. It doesn't make any sense. You have the information. You have your common sense.

But I want to tell you this much. When they talked about how we told the community everything, we told them everything, this tells a story right here. This is a compilation of everything this company did where it comes to saying they told the public. Here it is right here.

1978, they informed -- 3M informs DuPont about biopersistent. They don't tell the community a thing about it;

silent about it.

In 1979 DuPont started testing workers' blood levels, liver functions. They don't tell the public a thing about it.

Now, you understand this document -- this right here, 1979, this is what Dr. Fayerweather said he relied on and found -- and he found increased kidney cancer and liver cancer. That's the stuff that -- they said they talked about all these worker studies. This is one of the worker studies. And then when he goes to leadership and he says, I need $45,000 to do an Epi study, they say, No, wait until we get sued. And they remain silent about it with the community.

This isn't about workers. This case isn't about workers. It's about the community.

Employee communications. They talked about known -- toxicity known since 1965. Where? Equipment. They say nothing. Female employees move, they say nothing. This stuff will cause cancer, they say nothing. They don't say anything until they're sued. That's what I'm trying to say to you right now.

I think I heard, I think I heard Mr. Mace honestly say to you that we started doing filters in people's water in 1996 I think he said.

Play Playtis. I want to show you how long the technology has been around to do what they were ordered to do. They didn't do this because they were being friendly. They

didn't do this because they cared about this community. They did this because they were ordered by the EPA. They were punished by the EPA, and they did what they had to do.

Look at this, Mr. Playtis:

How many years has activated carbon filter been around?

Well, that's fairly old technology.

When you say it's old, it goes all the way back to the 1950s, doesn't it?

Probably.

They had the same technology they were ordered to use, they were punished to do it, and they finally did it in 1996 not because they cared a whit about the people on the Ohio River. It's because they were ordered to do it.

There's nothing magnanimous about this company, ladies and gentlemen. When you get back there and really look at the documents, you'll understand what I'm saying. You'll understand the fury I feel in my heart right now.

When we remain silent and we allow people to mistreat people, and we say it's not our problem because we didn't live down there with Mrs. Bartlett, and we're willing to say -- we're willing to bury evil, we're willing to bury conduct of people mistreating people, the problem with that is you are planting that kind of idea in the very foundation of our democracy.

It's going to show its ugly head again, ladies and gentlemen. It may not be this generation. It's the next generation. It gets worse and worse and worse. When we accept that we can walk out of this courtroom and it's okay, it's okay because of something Mr. Mace said that maybe had some kinship in our head. When we can walk out of here and we can say it's perfectly okay for a corporation, one of the biggest chemical corporations in the world, to come to West Virginia and Ohio and pollute the river with something they know is a toxin as early as 1988, and you walk out of here and say that's okay, I believe that cynic. I believe that cynic was right. And I've never believed in a cynic. But if you can do that in this case and you can say what they did, what they did by polluting this river with something they knew was going to cause cancer, and you have a kinship with that because it's okay, something is broken in our justice process.

Mr. Mace knows that. And Mr. Mace is playing piecemeal lawyering. Piecemeal lawyering is where you say something and you ignore all the obvious things that say just the opposite.

Ladies and gentlemen, this case isn't just about negligence. Negligence is the least of this company's problem. This case is what Dr. Siegel told you about. This case is what Dr. Siegel has called a conscious disregard for the health and safety of people. Dr. Siegel told you that. Mr. Petty told you that. It's a conscious disregard.

I'm not worried, frankly, about you deciding negligence. I don't think there's any question they were negligent. The question you're going to have to wrestle with back there, that you need to understand why we showed you all this stuff, why did I just make a big issue about the fact in 1997 they knew this stuff would cause cancer and held it quiet all the way through this trial, why I thought it was important, Mr. Rickard who said, yeah, I knew about cancer in 2012, chose to make the decision as late as 2015 not to let anybody know with a press release, with a media event, with a town hall meeting. To this day, this company up in Delaware does not care what's going on unless they're ordered to care.

And ladies and gentlemen, you saw everything that described nothing short of conscious disregard. This is the one I think you all need to focus on. I think it needs to be a clear yes. It needs to be, yes, you don't conduct business like that. You don't put people out -- first of all, you don't treat Mrs. Bartlett like she's damaged goods and come in the courtroom and have a lawyer saying, well, you had an ear problem, you had a Caesarean operation, you have scar already.

Ladies and gentlemen, here is the difficult part that you have. This is always a problem. And I have been doing this for 35 years and I know where juries have problems with corporations. They don't understand that they're a person. And you have to evaluate this person against that person. You

have to evaluate whether Mr. DuPont is worthy of you giving him a benefit of the doubt, because that's all he was begging for: Benefit of the doubt. This man does not deserve a benefit of the doubt. This man, he has made his bed. And the first time in -- the first time since all this started, you are going to make a decision whether what Mr. DuPont did is acceptable under American democracy standards.

The whole world is watching you. I know you know that. And you have to decide: Is it okay for a corporation just to go to people who are -- to an area where the most -- all they want, they just want trust. You see, we want to trust corporations. We make a contract with them. The contract is, Mr. Rickard, we want your company to make a lot of money. We want jobs. We want you to innovate. We want you to do all these things. It's a contract. But at the end of the day, all we want to say is be honest with us. Don't lie to us. Don't hurt our families. Don't do these things. It's a contract. And Mr. DuPont here, he violated that contract in such an awful way that's not just negligence, ladies and gentlemen.

I'm not going to go through this evidence again. You have it. And I wish what you would do is start with those documents I showed you. And every one of them put on that document line 1301, and you tell me that you're okay with the conduct of Mr. DuPont in the way he's treated these people all along the Ohio River. Because if it's okay, the system is

broken. The cynic is right.

THE COURT: Thank you, Mr. Papantonio.

That completes closing argument. We're going to take a short break. Then, when you come back, I will give you the final legal instructions that apply in this case. We'll be in recess for ten minutes.

(Recess taken from 3:27 to 3:40.)

THE COURT: Ladies and gentlemen of the jury: Now that you have heard the evidence and the arguments in this case, the time has come for me to instruct you as to the law governing in this case. Although you, as jurors, are the sole judges of the facts in this case, you are, of course, duty bound to follow the law as stated in these instructions and to apply the law so given to the facts as you find them from the evidence before you.

You are not to single out any one instruction as stating the law but you will consider these instructions as a whole. And of course you are not to be concerned with the wisdom of any rule of law because, regardless of any opinion you might have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in these instructions.

You have been chosen and sworn as jurors to try the issues of fact presented by the allegations of the complaint brought by the plaintiff, Carla Bartlett, whom I will refer to

as the plaintiff, against DuPont, referred to as the defendant in this case.

You are to perform this duty without bias or prejudice as to either party. The law does not permit jurors to be governed by such things as sympathy, prejudice or public opinion. The parties and the public expect that you will carefully and impartially consider all the evidence, follow the law in these instructions and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, or equal worth, and holding the same or similar stations in life. A corporation is entitled to the same fair trial as a private individual. All persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

A corporation is responsible for the acts of its employees, agents, directors and officers performed within the scope of his or her duties as an employee of the corporation.

The attorneys in this case may have referred to some of the governing rules of law in their closing arguments. If, however, any difference appears to you between the law as stated by the attorneys and those stated in these instructions, you are of course to be guided and governed by these instructions.

I want to emphasize to you that nothing I say in these instructions or have said during the course of this trial should be taken by you as any indication that I have any opinion about the facts of this case, what your verdicts should be or what my opinion might be. It is not my function to determine the facts in the case. That is your function and yours alone.

The evidence in this case consists of the sworn testimony of the witnesses and all of the exhibits which have been received into evidence which you will have with you as you deliberate. As I mentioned to you earlier and I repeat again, some things are not evidence and you must not consider them as evidence in deciding the facts of this case. That includes the statements and arguments of the attorneys; questions and objections of the attorneys; any testimony that I instructed you to disregard; and, anything you may have seen or heard when court was not in session even if what you have seen or heard was done or said by one of the parties or witnesses to this case.

Again, you are to consider only the evidence in this case. However, you are not limited to the bald statements from the witnesses. You are permitted to draw from the facts which you have found proved such reasonable inferences as seem justified in light of your own experience. That is another way of saying, from the facts that you find are proved, you may

draw an inference based upon your reason and your common sense.

It is the duty of lawyers to object when the other side offers testimony or materials which a lawyer believes is not properly admissible into evidence. If, during the course of the trial, I sustained an objection by one lawyer to a question asked by another, you are to, of course, disregard the question and not guess or speculate about what the answer might have been. If a question was asked and the witness answered it and I later ruled you should not consider the evidence or the answer, then you must disregard both the question and the answer in your deliberations just as if the question and answer had never been spoken.

There are some stipulations in this case. Statements and arguments of the lawyers are usually not evidence in the case unless made as an admission or stipulation. A stipulation is simply an agreement between both sides that certain facts are true. When the lawyers on both sides stipulate or agree to the existence of a fact, you must, unless instructed otherwise, accept a stipulation as evidence and regard that fact as proved.

I mentioned to you at the beginning of the case there are two types of evidence from which you may properly find the truth as to the facts of this case. The first is direct evidence, such as the testimony of an eyewitness. The other is indirect or circumstantial evidence, meaning the proof of a

chain of circumstances pointing to the existence or nonexistence of certain facts.

As a general rule, the law makes no distinction between direct or circumstantial evidence but simply requires the jury find the facts in accordance with the preponderance of the evidence, which we'll talk about in just a moment.

I used the word inference. Inferences are deductions or conclusions which reason and common sense lead you to draw from the facts established by the evidence in this case.

You, as jurors in this case, are the sole judges of the credibility or believability of the witnesses and the weight their testimony deserves. You may be guided by the appearance and the conduct of the witness or by the manner in which the witness testifies or the character of the testimony given or by the evidence to the contrary of the testimony given.

You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is or is not worthy of belief. You may consider each witness' intelligence, motive, state of mind and demeanor or manner while on the stand. Consider the witness' ability to observe the matters as to which he or she impresses you as having an accurate recollection of those matters. Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict

and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause you to discredit or not believe such testimony. As I'm sure you can appreciate, two or more persons witnessing an incident or transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter importance or an unimportant detail and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give to the testimony of each of the witnesses such weight or credibility, if any, as you believe it deserves.

Also, the weight of the evidence is not necessarily determined by the number of witnesses testifying to the existence or nonexistence of any fact. You may find that the testimony of a smaller number of witnesses as to any fact is more credible than the testimony of a larger number of witnesses to the contrary.

You have also heard from witnesses who are experts in particular fields because of special knowledge, education and/or experience. Such expert testimony is admitted for

whatever assistance it may provide to help you to reach a just verdict.

As with any other witness, the duty of deciding what weight to give the testimony of an expert witness rests upon you alone. In deciding what weight to give to an expert's testimony, you may consider the expert's skill, experience, knowledge, veracity and familiarity with the facts of the case. You should also apply the same rules that apply to other witnesses when testing the credibility of each expert witness and deciding what weight to give to his or her testimony.

Also, the testimony of certain witnesses was presented by video deposition. You should give the testimony the same consideration you would give had the witness personally appeared here in court.

Unless I instruct you otherwise, the burden of proof in this case is on the plaintiff, Mrs. Bartlett, to prove her claims and any damages by a preponderance of the evidence, which I will define for you.

Preponderance of the evidence is the greater weight of the evidence. That is, evidence that you believe because it outweighs or overbalances in your mind the evidence opposed to it. A preponderance of the evidence means evidence that is more probable, more persuasive or of greater probative value. It is the quality of the evidence that must be weighed. Quality may or may not be identical with the quantity of

evidence.

In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence, regardless of which side produced it.

If it turns out the weight of the evidence in your mind is equally balanced or if you are unable to determine which side of an issue has the preponderance, then the party who has the burden of proof has not established the issue by a preponderance of the evidence.

When I say throughout these instructions that a party has a burden of proof on any proposition or if I use the expression, quote, if you find or, quote, if you decide, by that I mean, you must be persuaded, considering all the evidence in the case, that the proposition is more probably true than not.

We turn now to a general statement of the issues in the case. As you know, Mrs. Bartlett alleges that DuPont used a chemical known as C-8 in its Washington Works plant near Parkersburg, West Virginia. She claims from the plant -- C-8 from the plant entered her drinking water and caused her to develop kidney cancer. DuPont denies these allegations, denies it breached a duty to Mrs. Bartlett and denies that C-8 caused her kidney cancer.

I instruct you that before this case began, the parties, DuPont and a representative of Mrs. Bartlett, agreed to have a

science panel study whether there was a link between C-8 and kidney cancer. The science panel conducted a study and concluded in 2012 that there is a probable link between C-8 and kidney cancer for persons drinking water for over one year having a C-8 content of .05 parts per billion or over.

Following presentment of this case, I instruct you that Mrs. Bartlett has conclusively established that she drank water for more than one year having a C-8 content of more than .05 parts per billion. Therefore, you will treat as proven in this case that Mrs. Bartlett has established that C-8 is capable of causing her kidney cancer. While this fact is established, you will still decide whether Mrs. Bartlett has proven all the elements of her claim and that, in her case, the kidney cancer was caused by C-8.

Mrs. Bartlett brings two claims against DuPont. The first is for negligence and the second is negligent infliction of serious emotional distress. These are the two claims you will decide. The defendant, DuPont, denies both of Mrs. Bartlett's claims and you will decide each of these two claims separately.

Now, I will explain the first claim brought by Mrs. Bartlett which is a claim for negligence. Negligence is a failure to use ordinary care. Ordinary care is the care a reasonably prudent person or corporation would use in similar circumstances. Ordinary care is not an absolute term but a

relative one viewed in the light of all the surrounding circumstances.

To prove her claim for negligence, Mrs. Bartlett has the burden of proving three elements by a preponderance of the evidence: First, that DuPont owed her a duty of care; second, that DuPont breached its duty of care to her; and, third, Mrs. Bartlett suffered an injury as a proximate result of DuPont's breach of the duty of care.

I'm going to give you instructions with regard to each of these three elements.

First, to prove the existence of a duty, Mrs. Bartlett must show by a preponderance of the evidence that a reasonably prudent person or corporation would have foreseen that injury was likely to result to someone in Mrs. Bartlett's position from DuPont's conduct. In deciding whether reasonable prudence was used, you will consider whether DuPont should have foreseen, under the circumstances, that the likely result of an act or a failure to act would cause injuries. The test for foreseeability is not whether DuPont should have foreseen the injuries exactly as it happened to Mrs. Bartlett. The test is whether, under the circumstances, a reasonably prudent corporation would have anticipated that an act or a failure to act would likely cause injuries.

If you find that DuPont owed Mrs. Bartlett a duty, you must then determine whether DuPont breached that duty. A

corporation breaches a duty by failing to use ordinary care. As I've just instructed, ordinary care is the care that a reasonably careful corporation would use under the same circumstances.

If you decide that DuPont did not use ordinary care, then DuPont breached its duty of care to Mrs. Bartlett. If you decide that DuPont did use ordinary care, then DuPont did not breach its duty of care to Mrs. Bartlett.

Mrs. Bartlett must prove not only that DuPont was negligent but also that such negligence was a proximate cause of her injuries. Proximate cause is an act or failure to act that was a substantial factor in bringing about an injury and without which the injury would not have occurred.

I will now discuss how to determine whether Mrs. Bartlett's injury was the natural and probable consequence of DuPont's conduct. To prove proximate cause, Mrs. Bartlett must show that her injuries were a natural and probable consequence of DuPont's conduct.

For Mrs. Bartlett's injuries to be considered the natural and probable consequence of an act, Mrs. Bartlett must prove that DuPont should have foreseen and reasonably anticipated that injury would result from the alleged negligent act. The test for foreseeability is not whether DuPont should have foreseen the exact injury as it happened to Mrs. Bartlett. Instead, the test is whether, under the circumstances, a

reasonably careful person or corporation would have anticipated that an act or failure to act would likely result in or cause injuries.

You've now heard the relevant law applicable to Mrs. Bartlett's negligence claim. If you find by a preponderance of the evidence that DuPont negligently and proximately caused injury to Mrs. Bartlett, then your verdict will be for Mrs. Bartlett. However, if you find that Mrs. Bartlett failed to prove any of the following: First, that DuPont owed her a duty; second, that DuPont breached the duty; and, third, DuPont's negligence proximately caused her injuries, then your verdict on the negligence claim must be for DuPont.

The second claim Mrs. Bartlett brings is for negligent infliction of serious emotional distress. In order for her to recover on this claim she must prove by the preponderance of the evidence the following four elements. First, that DuPont was negligent; second, that she suffered serious emotional distress; third, that her serious emotional distress was the proximate result of the negligence of DuPont; and, fourth, that the serious emotional distress of Mrs. Bartlett was reasonably foreseeable by DuPont.

I used a term serious emotional distress. That includes the increased fear of developing cancer if Mrs. Bartlett is aware that she, in fact, possesses an increased statistical

likelihood of developing cancer and that from this knowledge springs a reasonable apprehension which manifests itself as emotional distress.

In determining whether a serious emotional distress was reasonably foreseeable by DuPont, you should consider all of the circumstances of the parties as existing at the time of the alleged negligence of DuPont.

If you find that Mrs. Bartlett has proved by the greater weight of the evidence all of the elements I just mentioned of negligent infliction of serious emotional distress, then your verdict on the negligent infliction of serious emotional distress claim must be for Mrs. Bartlett. However, if you find that she has failed to prove by the greater weight of the evidence any one or more of those elements of negligent infliction of serious emotional distress, then your verdict on this claim must be for DuPont.

I'm now going to instruct you on the law of damages as it relates to Mrs. Bartlett's claims. If you find in favor of Mrs. Bartlett on either of her claims, then you will determine the issue of damages. As you can guess at this point, I have no way of knowing what your verdict would be. So the fact that I'm instructing you as to the proper measure of damages should not be considered as indicating any view of mine as to which party is entitled to your verdict. Instructions as to the measure of damages are given for your guidance only in the

event you find in favor of Mrs. Bartlett by a preponderance of the evidence in accordance with these instructions.

You are instructed that damages are not to be presumed nor may they be based upon speculation or guesswork. They must be proven to you. You must also understand that the burden is on Mrs. Bartlett to prove by the greater weight of the evidence each element of damage that she claims. Unless such item or element claimed is proven by a preponderance of the evidence, then Mrs. Bartlett cannot recover damages on that element of damage.

Mrs. Bartlett should neither be undercompensated or overcompensated for her injury. You must arrive at a reasonable and just award in view of the evidence. You are in no way bound by, nor should you use, any type of rigid mathematical formula. The determination of damages is solely your function to determine, not the function of the counsel or of the Court, and must be based on proper evidence.

If you find for Mrs. Bartlett, you will decide by the greater weight of the evidence an amount of money that will reasonably compensate her for the actual injury proximately caused by DuPont's negligence and/or negligent infliction of serious emotional distress. In deciding this amount, you will consider four factors. First, the nature and the extent of injury; second, the effect upon physical health; third, the pain and suffering experienced; and, fourth, the ability or

inability to perform usual activities.

From these, you will determine what sum will compensate her for injury to this date. In this case, you may not consider lost wages, salary or other compensation when determining damages because Mrs. Bartlett has not asserted a claim for these types of damages. Nor may you consider the cost of any future medical care that Mrs. Bartlett may require, again, because Mrs. Bartlett has not made a claim for such types of damages.

Mrs. Bartlett claims that she will experience pain or disability in the future. As to such claims, no damage may be found except that which is reasonably certain to exist as a proximate result of the injury.

Again, you are not to speculate regarding future damages. The law deals in probabilities and not possibilities. So in determining future damages, you may only consider those things that you find from the evidence are reasonably certain to occur in the future. Reasonably certain, as I used that term, means probable, meaning more likely than not to occur.

With reference to an amount of an award, if any, you are to follow these instructions as already given. Among other things, as I have instructed you, in determining her future damages, if any, you are not to consider the cost of any medical tests or screening that Mrs. Bartlett may have to undergo in the future but rather, the cost of pain or

disability she is reasonably certain to experience as a proximate result of the injury.

Finally, you may not consider any federal, state or city income taxes in determining damages. In no event may you add to or subtract from an award because of a possibility of such taxes.

You will be presented also with an interrogatory. That's a question in writing that will ask you whether you found in favor of Mrs. Bartlett on either of her claims. If you find for Mrs. Bartlett, you will then be asked whether Mrs. Bartlett proved by clear and convincing evidence whether DuPont acted with actual malice and whether Mrs. Bartlett has presented proof of actual damages that resulted from those acts or failure to act on the part of DuPont.

I used the term clear and convincing evidence which is different than a preponderance of the evidence. It applies in only this part of the case. Clear and convincing means that evidence producing in your minds a firm belief or conviction about the facts to be proved. It must be more than evidence simply that outweighs or overbalances the evidence opposed to it.

The question will also refer you to the term malice. Malice is defined as a conscious disregard for the rights and safety of other persons that has a great probability of causing substantial harm. Malice may be inferred from conduct and

surrounding circumstances.

That concludes the part of my instructions explaining the rules you will consider in evaluating the testimony and evidence. I'm going to finish up by giving some further explanation about your deliberations in the jury room and about your possible verdicts.

The first thing you should do as you retire to the jury room to deliberate is to choose someone to be your foreperson. The foreperson will act as the chairperson of the meeting and will be your spokesperson here in court. He or she must see to it that the charges and the issues are taken up as given to you, that everyone has a chance to speak their minds and that your deliberations proceed in an orderly fashion.

Your verdict must be unanimous. All of you must agree. After you have arrived at a verdict, the foreperson and the jurors will sign the verdict forms on the lines as indicated. I will read them to you in just a moment. Once you start deliberating, do not talk to anyone else outside of the jury room including the court security officer, the deputy clerk, to me or anyone else but you are free to talk to each other about the case during deliberations. If you have any questions or messages, please write them down on a piece of paper, signed by any of you, and then give them to the court security officer who will then give the question to me and I will respond to you as soon as I can. It may be that I will talk to the lawyers

about the question you have asked so it may take a few moments to get an answer to you. Normally, any questions or messages should be sent through your foreperson, although that is not a strict requirement.

You've heard a lot of reference to exhibits. You've seen many of them. You will have copies of each of them with you in the jury room as you deliberate.

If you do send a message, do not write down or tell anyone outside the jury room how you stand on your votes. For example, do not indicate that you are split a certain way or what your vote happens to be. That should all stay confidential until you are finished.

So now that all of the evidence is in and the arguments have been completed, when you go to the jury deliberation room, you will be free to talk about this case. In fact, it is your duty to talk with each other about the evidence and to make every reasonable effort you can to reach a unanimous verdict. Talk with each other, listen carefully and respectfully to each other's views and keep an open mind as you listen to what your fellow jurors have to say. Try your best to work out your differences and do not hesitate to change your mind if you are convinced that other jurors are right and perhaps your original position was wrong. And I mention again, your verdict must be unanimous.

I want to emphasize to you, do not ever change your mind

just because other jurors see the case differently or just to be finished with this case. In the end, your vote must be your vote. It is important for you to reach unanimous agreement but only if you can do so honestly and in good conscience.

So, again, listen carefully to what other jurors have to say and then decide for yourself if the plaintiff has proven her claim by a preponderance of the evidence with regard to each claim. And remember that if you have taken notes, the notes are for your personal use and should not be shared with other jurors. The reason for that is, it is important that each of you relies solely upon your recollection of the testimony in this case and not upon another juror's notes.

I also emphasize that no one will be allowed to hear your discussions in the jury room and no record will be kept of your discussions. The whole idea is that you should feel free to openly speak your mind about this case.

You will have with you the verdict forms. And these you've seen a little glimmer of in the closing arguments but I will read them to you. It has the name of the case on here. The first is the jury verdict form of the negligence claim. It asks a simple question. Do you find in favor of Mrs. Bartlett on her negligence claim? There's a box for yes and there's a box for no. You will mark but one of the two boxes and then each of you will sign the document.

It's also straightforward. If your answer is yes, if

you found for Mrs. Bartlett, then you'll answer the second question which reads, quote, if you found in favor of Mrs. Bartlett, what damages, if any, do you find Mrs. Bartlett is entitled to on her negligence claim? You will insert an amount. You'll all agree on that amount as well. If your answer is no, you of course won't fill that out.

The second form is similar. The second claim reads, the jury verdict form for negligent infliction of serious emotional distress claim. The question reads, do you find in favor of Mrs. Bartlett on her negligent infliction of emotional distress claim? Again, there's a yes box and a no box. You'll mark one of the two. All of you must agree and all of you will sign.

The form also indicates, if you answered yes, keep going to the damage question. If you answered no, then the form is completed.

If you answer yes, the form asks this question. If you found in favor of Mrs. Bartlett, what damages, if any, do you find Mrs. Bartlett is entitled to on her negligent infliction of emotional distress claim? You'll insert an amount all of you will have to agree upon.

The third verdict form asks you sort of a collective question. There are two claims and this question reads as follows: If you found that Mrs. Bartlett was entitled to damages on either of her claims, what is the total sum of the amount of damages you found Mrs. Bartlett is entitled to

without duplicating any damages? You'll insert an amount. Again, you'll only answer this if you found in favor of Mrs. Bartlett on either of the two claims, or both, and then you'll all have to agree and sign the form.

The fourth form is captioned jury verdict interrogatory. It reads as follows: If you found in favor of Mrs. Bartlett on either of her claims, do you find that Mrs. Bartlett has proven by clear and convincing evidence that DuPont acted with actual malice and that Mrs. Bartlett has presented proof of actual damages that resulted from those acts or failures to act of DuPont? And you will mark yes or no. You'll check one of the boxes. Again, all of you must agree.

Remember, you have to make your decision based only on the evidence that you've heard here in court together with the exhibits. Do not try to gather any more information about the case on your own while you're deliberating.

For example, do not conduct any experiments inside or outside the jury room. Do not bring any books such as a dictionary or anything else such as a computer with you to help you with your deliberations. Again, do not conduct any independent research, writing or investigation about the case and do not visit any places that were mentioned during the trial.

During your deliberations, you must not communicate with or provide any information to anyone by any means concerning

this case. You may not use any type of electronic device or medium such as a cell phone, telephone, smart phone, BlackBerry, iPhone, computer, et cetera, and you may not use any sort of social media such as Facebook, LinkedIn, MySpace, YouTube or Twitter to communicate anything about this case until your verdict is accepted.

Again, make your decision only on the evidence presented here in court together with the exhibits.

Again, I want to conclude by cautioning you that nothing I've said in these instructions or said throughout the trial should be taken by you as any indication of how I think your verdict should be returned. When you arrive at a verdict, you will notify the court security officer and he will notify me as well.

The instructions I have just given to you will be also given to you in writing. These instructions will be contained in a three-ring binder and will be placed in the charge of your foreperson. You are invited to use these instructions. There's an index in the beginning and you can use the instructions in any way that will assist you. You may pass these instructions from juror to juror but I ask that you not remove any single page or pages from the binder because I want you to consider these instructions as a whole and not as one page representing anything that would cause you not to consider the remaining pages.

Again, there's a table of contents that you can use.

We're ready to go to the jury room to deliberate but there's one more matter I want to bring to your attention to has to do with schedule.

I've tried to keep to a 9:00 to 5:00 schedule and that's what we've done up to this point. Once the case is submitted to all of you, that's going to be up to you. We can continue on a 9:00 to 5:00 but I will do -- we only have about 40 minutes today. How long you take on this case is entirely up to you. But what I will do at five o'clock is bring you back in here and ask you if you're ready to recess. Only if all of you would wish, you can stay later any night that you're here or we can recess at 5:00. When you come back, if you come back tomorrow, you have to all be here to begin deliberations. We'll keep the door open just so you'll know physically you're not to begin deliberation until you're all present.

So with that, you are ready to deliberate and you'll be taken back to the jury room.

(Thereupon, the jurors exit the courtroom to begin deliberation at 4:19 p.m.)

THE COURT: Counsel, as we discussed, you don't have to all be here during the deliberations but I do want one attorney from each side who has full authority to speak for each client in the event there's a question or some other matter that develops during the course of deliberations. As I

mentioned to the jurors, I'll bring them back in at 5:00 and see if they would -- my guess is they'll want to go home at 5:00 but we'll see for some reason they want to stay over, I'm inclined to let them. That may be more of an option as we go further into a day or two of deliberations.

Any other matters we need to take up?

MR. MACE: Your Honor, I take it we fully preserved all of our prior objections on the jury instructions and other issues?

THE COURT: And those are noted. So I make that part of the record.

From the plaintiff?

MR. PAPANTONIO: Nothing, Your Honor.

THE COURT: All right. Scheduling for tomorrow. I normally invite counsel in for coffee while the jury is out before anybody knows the verdict. I'm doing a Naturalization at 10:00. I'm thinking right after that. So about 10:45, why don't we plan on getting together in my chambers.

With that, we'll be in recess.

(A recess was taken at 4:21 p.m. until 5:00 p.m.)

(Thereupon, the jurors enter the courtroom.)

THE COURT: So, ladies and gentlemen, we're up to five o'clock. With a show of hands, who would like to go home at this point? Everybody. You are unanimous. Good.

So we'll come back tomorrow at 9:00. If you're all

here, you can start earlier. But if not, wait until everybody is here and then you'll be able to begin your deliberations. Add then, again, you'll set the schedule. I'm going to assume it's 9:00 to 5:00 again, but if you decide differently, just let me know and we'll adhere to that.

Remember all at admonitions we've talked about. I don't need to repeat them. Keep those in mind and then you'll be back to begin your deliberations at nine o'clock. Have a nice evening.

(Thereupon, the jurors exit the courtroom).

THE COURT: I note the courtroom looks so clean all of a sudden.

Are there any other matters we need to take up before we recess for the day?

MR. MACE: Not on behalf of the defense, Your Honor.

MR. PAPANTONIO: Not on behalf of Plaintiffs, Your Honor.

THE COURT: Have a nice evening. We'll see you tomorrow.

(The proceedings were adjourned at 5:02 p.m.)

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C E R T I F I C A T E

We, Lahana DuFour and Shawna Evans, Official Court Reporters of the United States District Court for the Southern District of Ohio, do hereby certify that the foregoing constitutes a true and complete transcription of our stenographic notes taken of the proceedings held in the afore-captioned matter on the 6th day of October, 2015.

In testimony whereof, we hereunto set our hand on the 13th day of October, 2015.

s/Lahana DuFour, RMR, CRR
Lahana DuFour, RMR, CRR
Official Court Reporter
Southern District of Ohio

s/Shawna Evans, RMR
Shawna Evans, RMR
Official Court Reporter
Southern District of Ohio